PUNISHMENT IN THE SHADOWS: REFORMING ABEYANCE AGREEMENTS IN SCHOOL DISCIPLINE

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ABSTRACT

This Note examines the unregulated use of abeyance agreements in school discipline and proposes safeguards to ensure they do not function as coercive mechanisms that strip students of due process or reinforce systemic inequities. Abeyance agreements are behavioral contracts in which a school agrees to suspend disciplinary action in exchange for a student's compliance with specified terms. These contracts can offer students a second chance, but they come at a steep cost: students must forfeit their rights to procedural due process, including a hearing on the initial allegation and any appeal. Although abeyance agreements could replace more severe disciplinary actions, they currently operate without oversight and risk amplifying the harms of exclusionary discipline, reinforcing systemic pushouts, and enlarging the school-to-prison pipeline.

This Note argues that abeyance agreements should be subject to procedural and substantive safeguards informed by lessons from the juvenile legal system. First, it explores foundational issues in school discipline, such as the limited rights afforded to individual students, the lasting harms of exclusionary discipline policies, and the systematic pushout of marginalized students from traditional educational settings. Second, it examines opportunities arising from abeyance agreements and their potential risks, especially to fairness and equity. Third, it draws lessons from plea agreements and deferred disposition agreements in the juvenile legal system to inform potential reforms based on voluntariness, developmental appropriateness, and systematic fairness. Fourth, it

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* This paper is dedicated to the Juvenile Justice Clinic—the reason I attended Georgetown Law and the most supportive part of law school—and to my mentors, Professor Kristin Henning and Professor Eduardo Ferrer, whose leadership in the JJC has inspired and empowered me. Professor Ferrer, thank you for your wisdom, compassion, and belief that healing is part of justice. Professor Henning, thank you for your fierce advocacy and for modeling with grace and resolve the kind of lawyer I aspire to be. I am deeply grateful to my mother, Carolyn Holland, for her unconditional love, her constant availability, and her steady presence as my most trusted adviser. To my brother, Bernard Siliezar, thank you for your steadfast support and your strength of character. And above all, to my sister, Erica Siliezar—your courage, resilience, and love continue to inspire my commitment to justice for children.

proposes reforms that adapt promising juvenile justice safeguards—including consent standards, individualized supports, and a substantial compliance model—to ensure that abeyance agreements function as just and nurturing alternatives to exclusionary discipline rather than as hidden pathways to student removal.

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INTRODUCTION

Pretend, for a moment, that you are a 15-year-old boy sitting with your mother in a cramped conference room at your school. Across from you, the assistant principal and a district administrator shuffle their papers; their expressions are unreadable. You already know why you are here. A week ago, your teacher claimed that you used your phone in class. When she tried to take it, you hesitated—maybe you raised your voice, maybe you didn't. Either way, she called it "insubordination" and "disruptive behavior." Now, your school is deciding what happens next.

The district administrator slides a single sheet of paper across the table. "This is an abeyance contract," he says. You look down at the document.

It's filled with rules and conditions, including one that says you waive a right to a hearing and any subsequent appeal.[1] "You have a choice," the administrator continues. "If you sign this, your suspension won't go into effect—yet. Instead, it'll be put on hold as long as you follow certain conditions. You must show up to every class on time, stay out of trouble, and obey all school rules until the end of the semester." Your mother shifts in her chair beside you. "What if we don't sign?" she asks. The administrator does not hesitate. "Then the suspension starts today," he says. You glance at your mom. She looks at you, at the paper, and back at you. The clock on the wall ticks. You have no lawyer and no time to negotiate. This doesn't feel like a choice. Your hand grips the pen, and you sign.

This story is not unique. Students across the country are subject to abeyance agreements.[2] Dr. David Perrodin, an expert in high-stakes decision-making, formally defined an abeyance agreement as a "behavior contract in which a school agrees to halt disciplinary action—suspension or expulsion—as long as the student does not engage in any further misconduct during a specified period."[3] While abeyance agreements can vary in their terms and conditions, Dr. Perrodin reports that waiving due process for the initial violation and subsequent appeals is standard.[4] If the

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[1] The Tucson Unified School District uses the following terms and conditions in its standard form for abeyance agreements:

> 1. The student and parent/legal guardian agree to waive (1) the student's right to a hearing on the long-term suspension if that has not yet been held and (2) any subsequent appeal.
> 2. The student will serve #Days Suspension days of suspension and may return to school on Return Date from Suspension. The school agrees to hold #Days days of suspension in abeyance.
> 3. The student agrees to obey all school rules and to attend every class, every day unless excused by a parent/legal guardian.
> 4. If the student has any further violation of the Guidelines for Student Rights & Responsibilities, any remaining suspension days will automatically be imposed in addition to any consequences for the current violation . . . .

Rachael K. Cox, *Obey or Abey: An Empirical Examination of Abeyance Agreements in Public School Discipline*, 117 NW. U. L. REV. 1427, 1473–75 (2023).

[2] A "flurry of descriptors" have been used for agreements that promise to hold off a suspension, expulsion or other form of discipline. Descriptors have included pre-expulsion agreements**,** suspended expulsion contracts, or last-chance behavior contracts. *Id.* at 1431.

[3] David P. Perrodin, *Abeyance Agreements: Evading Accountability for Disciplinary Actions?* 104 PHI DELTA KAPPAN 24, 25 (2022); *see also id.* at 1434.

[4] Typical abeyance agreement include the following: (1) acknowledgement of the student's violation, (2) the agreement's duration, (3) an attendance policy, (4) a reference to the school's code of conduct, and (5) a waiver of due process for the initial violation and any subsequent appeal. They also lack affirmative offerings from the school,

student successfully complies with the abeyance agreement, then the disciplinary action is dismissed. However, failure for any reason will immediately trigger the exclusionary discipline without any recourse for the student to challenge the initial allegations or alleged failure. Therefore, a student who enters an abeyance agreement and has a single misstep may be suspended or expelled without due process.

Despite their use in school discipline, abeyance agreements operate outside formal data reporting and oversight. Unlike suspensions or expulsions, schools are not required to track or disclose the use of abeyance agreements.[5] Schools benefit from these off-the-record agreements because they offer a quick resolution without further investigation or records that "might reveal a skill deficit, pattern of behavior, or even a systemic practice of institutional bias."[6] While abeyance agreements allow students to avoid suspension or expulsion, they could also sidestep due process protections and hide inequities in school discipline. Though the prevalence of abeyance agreements remains underexplored,[7] the risk of infringing upon any student's rights warrants intervention.

This Note argues that if schools are to continue using abeyance agreements in school discipline, these agreements should be subject to procedural and substantive safeguards. Part I explores foundational issues in school discipline, such as its legal foundations, its disproportionate impact on marginalized children, and the systematic pushout of these children from traditional educational settings. Part II examines the benefits and risks of abeyance agreements in school discipline. Although they could divert students from harmful exclusionary discipline, these agreements might push out students by undermining due process, coercing students, and obscuring opportunities for long-term improvement. Part III explores plea agreements and deferred disposition agreements in the

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including potential supports in which the student can engage. *Id.* at 25–26; Cox, *supra* note 1, at 1434.

[5] The Education Commission of the States compiled information on school discipline policy from statutes and regulation across all 50 states and the District of Columbia. It found that at least 39 states and the District of Columbia have statutes or regulation that require schools to report on their use of suspension and expulsion. No state statute included a requirement for a school to report its use of a behavioral contract or other form of an abeyance agreement for students facing disciplinary charges. Bryan Kelley, Carlos Jamieson & Zeke Perez, *50-State Comparison: School Discipline Policies,* EDUC. COMM'N OF THE STATES (May 17, 2021), https://www.ecs.org/50-state-comparison-school-discipline-policies/.

[6] Perrodin, *supra* note 3, at 27–28.

[7] Despite their use in school discipline, abeyance agreements have received minimal scholarly attention. To date, only two articles have substantively examined these agreements. *See generally* Perrodin, *supra* note 3; *see generally* Cox, *supra* note 1 (providing the first empirical study on abeyance agreements, analyzing their impact on student outcomes, and highlighting due process concerns).

juvenile legal system as potential bases for guiding the reform of school abeyance agreements. Part IV then proposes specific procedural and substantive safeguards that reshape abeyance agreements into a channel for fairness, nurturing, and equity in schools. Overall, this Note advocates for reforms that ensure abeyance agreements no longer operate as unchecked disciplinary tools that undermine fairness and equity in education.

I. LEGAL FOUNDATIONS AND HARMS OF SCHOOL DISCIPLINE

The legal framework governing school discipline affords students few procedural protections and enables schools to impose lasting consequences with limited oversight. This Section examines the foundations and implications of that framework. First, it traces the evolution of students' constitutional rights in disciplinary settings and highlights how judicial deference has produced a dual system where children receive fewer due process protections in schools than in court. Then, it explores how this legal structure has enabled the rise of exclusionary discipline that removes children from the classroom with lasting harms to those removed. Finally, it turns to informal removal practices—known as pushouts—that operate outside official reporting channels but have similarly detrimental effects. Together, these dynamics illustrate how school discipline functions within a context of limited rights, where unchecked discretion and systemic bias could thrive.

A. From Gault to Goss: Children's Due Process Rights in Court Versus School

The legal protections over a child's due process rights depend on where the proceeding is heard. After being accused of committing an offense at school, a student's case can be heard in three potential venues: adult criminal court, juvenile delinquency proceedings, or within the school.[8] The U.S. Supreme Court has more actively safeguarded essential rights in criminal and delinquency proceedings than when the matter is heard at school. This raises serious concerns about the potential for fair decision-making and due process in schools.

If a student is charged as an adult in criminal court, the student is entitled to certain constitutional protections that only apply when the government imposes or threatens punishment to an adult.[9] For example,

[8] *See, e.g.,* Brian J. Fahey, *A Legal-Conceptual Framework for the School-to-Prison Pipeline: Fewer Opportunities for Rehabilitation for Public School Students*, 94 NEB. L. REV. 764, 765, 768–786 (2015) (discussing the adult criminal punishment, juvenile justice, and school discipline models for regulating juvenile conduct).

[9] *Id.* at 768 (referencing the Eighth Amendment's ban on cruel and unusual punishment, the Fifth Amendment's protection against self-incrimination and double jeopardy, the

when the government imposes or threatens punishment, criminal offenders are subject to the protections of the Eighth Amendment's prohibition on cruel and unusual punishment,[10] the Fifth Amendment's guarantee against self-incrimination and double jeopardy,[11] and the Sixth Amendment's right to a jury trial as well as the right to counsel.[12] Additionally, every individual is entitled to due process under the Fourteenth Amendment before a punishment is imposed.[13]

In seminal cases, the Supreme Court clarified the due process rights afforded to children in delinquency proceedings. In the case of *In re Gault*, the Court held that youth facing incarceration have certain due process rights prior to conviction, including the right to be informed of charges, the right to confront and call witnesses, and the right to counsel.[14] Then, in *In re Winshop*, the Court held that due process requires the government to prove each element of a criminal offense beyond a reasonable doubt in a juvenile proceeding, similar to adult cases.[15] The Court reasoned that this requirement protects the accused child from the stigma of a conviction and loss of liberty.[16] Later, the *McKeiver v. Pennsylvania* Court found that, unlike in adult criminal court, due process does not require that a child have the right to a jury trial in delinquency court proceedings.[17] These decisions underscore the Court's recognition that children are entitled to some due process protections afforded to adults when those children face consequences that could significantly impact their futures.

However, if a case is heard in a school, students enjoy significantly fewer protections. The Supreme Court has strongly discouraged state

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Sixth Amendment's right to a jury trial and right to counsel, the Ex Post Facto Clause's prohibition on punishment for conduct that occurred prior to the enactment of that conduct's proscription, and the Fourteenth Amendment's entitlement to due process).

[10] U.S. CONST. amend. VIII; *see* Ingraham v. Wright, 430 U.S. 651, 670 & n.39 (1977) (finding the Eighth Amendment applicable to criminal proceedings but inapplicable to school discipline because "an imposition must be 'punishment' for the Cruel and Unusual Punishment Clause to apply").

[11] U.S. CONST. amend. V ("No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself . . . ."); *see* Kansas v. Hendricks, 521 U.S. 346, 369–70 (1997) (holding that the Fifth Amendment prohibition against double jeopardy did not apply to a Kansas sex-offender registry because the registry was non-penal).

[12] U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . .").

[13] Bell v. Wolfish, 441 U.S. 520, 535 (1979) (holding that, because every individual has a liberty interest in being free from punishment, the Due Process Clause requires that a detainee not be punished prior to an adjudication of guilt . . .").

[14] 387 U.S. 1, 47–49 (1967).

[15] 397 U.S. 358, 365–66 (1970).

[16] *Id.* at 367 ("[Court] intervention cannot take the form of subjecting the child to the stigma of a finding that he violated a criminal law and to the possibility of institutional confinement on proof insufficient to convict him were he an adult.").

[17] *See generally* McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

courts from defining the rights of students in public schools.[18] This direction has led to near-total deference to school officials' enforcement of state power in educating the state's student citizens. One of the few avenues for students to seek relief lies in the claim that a school failed to provide procedural due process when depriving a student of their education.[19] Two 1970s cases continue to define students' due process rights in school discipline: *Goss v. Lopez* and *Ingraham v. Wright*.

In 1975, the *Goss* Court found that public school students have a property interest in their education, and students cannot be deprived of this interest on the grounds of misconduct without "fundamentally fair procedures to determine whether the misconduct has occurred."[20] The Court held that the Due Process Clause of the Fourteenth Amendment requires a student facing a suspension of ten or fewer days be provided certain procedural protections, including oral or written notice of the charges against the student, an explanation of the evidence against the student, and an opportunity for the student to rebut the accusations.[21] In an apparent effort to avoid overburdening the school system, the Court "stop[ped] short" of interpreting the Due Process Clause as requiring that students have legal counsel and the opportunity to confront or call witnesses.[22] *Goss* also recognized that "[l]onger suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures."[23]

Subsequent Supreme Court cases reinforced deference to school officials in disciplinary hearings. Aside from *Goss,* the Supreme Court has been hesitant to assert judicial authority to interfere with school discipline, including school searches and interrogations.[24] For example, in 1977, the

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[18] *See, e.g.,* Goss v. Lopez, 419 U.S. 565, 578 (1975) ("Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities."); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 507 (1969) ("[T]he Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to pre- scribe and control conduct in the schools."); J.P. ex rel. A.P. v. Millard Pub. Schs., 285 Neb. 890, 899, 830 N.W.2d 453, 461 (2013) ("A school district is a creature of statute and possesses no other powers other than those granted by the Legislature.").

[19] *See* Tonja Jacobi & Riley Clafton, *The Law of Disposable Children: Discipline in Schools*, 2023 U. ILL. L. REV. 1123, 1131–37.

[20] *Goss*, 419 U.S. at 574.

[21] *Id.* at 577–84.

[22] *Id.* at 583.

[23] *Id.* at 584.

[24] *See generally* New Jersey v. T.L.O.*,* 469 U.S. 325 (1985) (holding that a school official is permitted to search a student if there are reasonable grounds for suspecting that the search will result in evidence of the student's violation of law or school rules); Safford Unified School District #1 v. Redding*,* 557 U.S. 364 (2009) (holding a public-school official cannot strip-search a student without a specific suspicion that the student is hiding

Ingraham Court found that a school's disciplinary practices could be challenged by due process claims but not cruel and unusual punishment claims.[25] In *Ingraham,* students claimed that the school district's use of corporal punishment—paddling students on the buttocks with a flat wooden paddle—was cruel and unusual under the Eighth Amendment and violated the students' due process right to notice and a hearing under *Goss*.[26] After rejecting the argument that the corporal punishment administered to the students constituted cruel and unusual punishment,[27] the Court distinguished the case from *Goss.* It held that the hearing and notice requirements established in *Goss* were not applicable here because corporal punishment did not represent a substantial deprivation of due process rights, unlike in *Goss* where suspensions implicated property interests.[28] The Court reasoned that as long as the punishment was "reasonable" and "within the limits of common law privilege," there was no substantive violation of students' due process rights.[29] Thus, *Ingraham* affirmed the enduring principle that judicial intervention in school discipline matters must stem from students' due process interests or from remedies explicitly provided by state law.

Legal scholars argue that the cumulative effect of the Supreme Court's decisions permits school discipline to operate in a legal gray area with little accountability. For example, scholars argue the Supreme Court's "judicial neglect" and "lack of oversight" over school discipline proceedings allow for "enormous freedom to infringe upon the fundamental rights of schoolchildren."[30] They argue that the ultimate story of *Goss* and its progeny is one of deference to schools in which the Court's

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evidence in intimate places).

[25] *See generally* Ingraham v. Wright, 430 U.S. 651 (1977).

[26] *Id.* at 653–55.

[27] *Id.* at 664 (finding that corporal punishment did not violate the Eighth Amendment because the Founders only intended for the Eight Amendment to apply to criminal proceedings).

[28] *Id*. at 674, 674 n.43 ("That corporal punishment may, in a rare case, have the unintended effect of temporarily removing a child from school affords no basis for concluding that the practice itself deprives students of property protected by the Fourteenth Amendment.").

[29] *Id*. at 675–76. The *Ingraham* Court maintained:

> [Reasonable corporal punishment] represents the balance struck by this country between the child's interest in personal security and the traditional view that some limited corporal punishment may be necessary in the course of a child's education. Under that longstanding accommodation of interests, there can be no deprivation of substantive rights as long as disciplinary corporal punishment is within the limits of the common-law privilege.

Id.

[30] *See* Jacobi & Clafton, *supra* note 19, at 1131.

failure to impose more stringent due process requirements has created "a system in which school administrators can effectively act as judges, prosecutors, and enforcers—often with little accountability."[31] Similarly, Lawyer Brian Fahey compares *Goss* and *Ingraham* to demonstrate that courts have an "almost categorical" aversion to interfering with school discipline, and they regard the spheres of criminal punishment and school punishment as entirely separate.[32] The "end result" of this is that students are generally disciplined at the discretion of school officials with minimal due process protections for students' rights.[33]

Courts should revisit the decisions of *Goss* and *Ingraham* to clarify the scope of students' due process rights and fortify these rights in light of today's disciplinary landscape. While these decisions were likely grounded in concerns about administrative efficiency and the presumed benevolence of school officials, they have since enabled a regime of unchecked discretion in which students may face severe educational consequences with minimal procedural protection, often at the sole discretion of school administrators.

B. Visible Discipline: The Lasting Harms of Exclusionary Discipline

The Supreme Court's broad deference to school administrators has not only limited students' rights but also enabled the use of exclusionary discipline with minimal oversight and accountability. Instead of acting as a measured response to misconduct, exclusionary practices—particularly suspensions and expulsions—often serve as punitive measures that disrupt students' education and heighten their risk of long-term negative outcomes. For example, an empirical analysis found that attending a "stricter" school—as measured by higher suspension and expulsion rates—made a student less likely to attend a four-year college and more likely to drop out of school, be arrested, and be incarcerated.[34] A meta-analysis of decades of research similarly found that graduates of schools with higher suspension and expulsion rates were more likely to be involved in future criminal activity.[35] These findings show that suspensions contribute to the well-documented school-to-prison pipeline in which children's school experiences predict future involvement in the

[31] *Id.* at 1134.
[32] Fahey, *supra* note 8, at 765, 786–87.
[33] *Id.*
[34] *See* Andrew Bacher-Hicks, Stephen B. Billings & David J. Deming, *The School-to-Prison Pipeline: Long-Run Impacts of School Suspensions on Adult Crime*, 16 AM. ECON. J. 4, 165, 165, 166 (2024).
[35] *See* Julie Gerlinger, Samantha Viano, Joseph H. Gardella, Benjamin W. Fisher, F. Chris Curran & Ethan M. Higgins, *Exclusionary School Discipline and Delinquent Outcomes: A Meta-Analysis*, 50 J. YOUTH & ADOLESCENCE 1493, 1499–1500 (2021).

criminal legal system.[36] Thus, many schools are replacing short-term solutions to behavioral issues with long-term delinquency.

Supporters of exclusionary discipline often argue that it deters misconduct and improves academic outcomes for the broader school community. However, decades of research have contradicted this claim. For example, one study found no evidence that suspensions or expulsions improve school safety or student behavior.[37] More recent research went further by showing that students were more likely to face long-term negative outcomes when they had attended schools with a history of stricter discipline.[38] These outcomes included violent attitudes and behaviors, not graduating from high school, mental health issues, future involvement with the criminal legal system, and restricted opportunities in education, employment, military service, and housing.[39] Additional research showed that harsh discipline doesn't just hurt the student being punished—it can also negatively impact the school and other students.[40] This is because high rates of suspensions and expulsions can lower the achievement of even the those students who aren't disciplined.[41] Taken together, this research demonstrates that exclusionary discipline not only fails to achieve its intended goals but also creates a school climate that is less supportive, less effective, and more harmful for everyone involved.

Moreover, exclusionary discipline reflects longstanding patterns of racial inequity in school punishment practices. The U.S. Department of Education's most recent Civil Rights Data Collection report found that Black boys and girls were nearly two times more likely than their white peers to receive in-school suspensions, out-of-school suspensions, and expulsions.[42] Moreover, in 2023, the U.S. Education and Justice Departments released an investigation of school discipline complaints over the prior three presidential administrations.[43] The investigation found patterns of disproportionately harsher discipline for Black students as

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[36] Bacher-Hicks et al., *supra* note 34, at 166, 190.

[37] *See* AM. PSYCH. ASS'N ZERO TOLERANCE TASK FORCE, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCH. 852, 855–57 (2008).

[38] *See* Bacher-Hicks et al., *supra* note 34, at 190.

[39] *Id.*

[40] *See* DEREK W. BLACK, ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE 78–98 (2016).

[41] *Id.* at 78–79.

[42] *See* U.S. DEPT. OF EDUC. OFF. FOR CIVIL RIGHTS, STUDENT DISCIPLINE AND SCHOOL CLIMATE IN U.S. PUBLIC SCHOOLS 7 (2023), https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/crdc-discipline-school-climate-report.pdf.

[43] Harold Jordan, *Why School Discipline Reform Still Matters*, ACLU NEWS AND COMMENTARY (Oct. 19, 2023), https://www.aclu.org/news/racial-justice/why-school-discipline-reform-still-matters.

compared to white students.[44] This included more frequent punishment for subjective and low-level infractions (e.g., disorderly behavior), harsher punishment for the same infraction, and more frequent use of exclusionary interventions for the same infraction.[45] These findings show that racial disparities in school discipline are driven, not by differences in student behavior, but by deep-rooted systemic biases that target and disadvantage students of color.

The disparities observed in school discipline mirror those observed in the juvenile legal system, where children of color are overrepresented at every stage.[46] Black children are systematically denied the same leniency and opportunities for rehabilitation as those extended to their white peers.[47] While white adolescents are often given the benefit of the doubt and an opportunity to learn from their mistakes, Black children frequently encounter harsher disciplinary measures for similar behaviors.[48] This disparity reflects on-going societal biases that criminalize Black youth instead of acknowledging their need for developmentally appropriate interventions.[49] "Not all youth have the privilege of a prolonged and forgiving adolescence."[50]

Exclusionary discipline deprives children of vital educational opportunities and increases their chances of future involvement with the juvenile legal system. School discipline practices should be monitored and restructured to eliminate embedded disparities to ensure all students receive fair and appropriate treatment.

C. Hidden Discipline: The Problem of Pushouts

Nationwide, most schools are required to report the number of suspensions and expulsions carried out each year.[51] Experts indicate that schools sometimes use informal mechanisms to bypass such reporting requirements by excluding some students from traditional public school education settings.[52] These unregulated practices, known as "pushouts," allow schools to circumvent reporting high disciplinary numbers through official expulsion records while redirecting some students to alternative schools with limited resources.[53] Nevertheless, pushout data is coded

[44] *Id.*
[45] *Id.*
[46] KRISTIN HENNING, RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH 15 (2021).
[47] *Id.* at 2–24.
[48] *Id.* at 13–16.
[49] *Id.* at 12–13.
[50] *Id.*
[51] Kelley et al., *supra* note 5 (finding that 39 states and the District of Columbia require that K-12 schools report on their use of suspensions and expulsions).
[52] Jacobi & Clafton, *supra* note 19, at 1150–57.
[53] *Id.*

obscurely, leaving no paper trail to determine exactly under what circumstances a student left a school.[54]

The practice of pushouts is well-documented. Schools have strong incentives to push students out through informal means rather than formally disciplining them.[55] For example, in Illinois, pushouts rose in part as a reaction to the passage of Senate Bill 100, which mandated that schools exhaust all other interventions before imposing an out-of-school suspension longer than three days, an expulsion, or a disciplinary removal to alternative schools.[56] After the bill was passed, expulsions decreased while pushouts rose.[57] Some schools used an array of tactics to push out "problem" students.[58] This included schools directly pressuring students to transfer to avoid harsher discipline, encouraging students to leave voluntarily because the school was not "right" for the child, and informally pressuring students by telling them to go elsewhere without indicating that they could stay.[59] Particularly troubling were cases where schools called the police to arrest a student for a minor incidents as a way to remove the student without recording the action as school discipline.[60]

Pushouts can also manifest through covert exclusion, such as barring certain students from entering school buildings without officially recording a suspension. In the District of Columbia, for example, a *Washington Post* investigation uncovered that several public high schools used internal "do not admit" lists to deny students entry and effectively remove them from school without any formal disciplinary record.[61] Despite being functionally indistinguishable from an out-of-school suspension or expulsion, these exclusions were often not recorded or else marked as unexcused absences, thereby allowing schools to suppress their reported suspension rates.[62] The ACLU of D.C. further revealed that these unofficial removals were part of a broader pattern of exclusion where schools masked the scale of disciplinary action by avoiding documentation and oversight.[63]

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[54] *Id.* at 1154.
[55] *Id.* at 1150–57.
[56] *Id.* at 1150–51 (referencing Act of Sept. 15, 2016, Pub. Act 099-0456, 2016 III. Laws).
[57] *Id.* at 1151.
[58] *Id*. at 1151–52.
[59] *Id*.
[60] *Id.* at 1157.
[61] *See* Alejandra Matos & Emma Brown, *How The Washington Post examined suspensions in D.C. schools*, WASH. POST (Jul. 18, 2017), https://www.washingtonpost.com/news/education/wp/2017/07/18/how-the-washington-post-examined-suspensions-in-d-c-schools/.
[62] *Id.*
[63] Kendrick D. Holley, Statement on behalf of the American Civil Liberties Union of the District of Columbia before the DC Council Committee on Education Public Oversight Roundtable on Graduation Rate Accountability (Dec. 15, 2017), https://www.acludc.org/en/legislation/aclu-dc-statement-public-oversight-roundtable-

Schools have many perverse incentives to push out students. Since pushouts are not officially recorded as suspensions or expulsions, they enable schools to sustain the illusion of lower disciplinary rates while effectively removing students with academic or behavioral challenges. Pushouts also allow schools to academically weed out unwanted children. For example, a post-incarceration reintegration officer in the juvenile legal system reported that schools use pushouts to reach 100% graduation rates or strategically around standardized test dates to obtain higher average scores.[64] The illusion of success can bring positive media attention and political favor while concealing deep educational failures—particularly for marginalized students. As the ACLU of D.C. observed, "schools prioritize improving their numbers rather than achieving positive student outcomes" and "simply shepherd[] [students] through the system so that the metrics would reflect success."[65] These perverse incentives ultimately reward exclusion over inclusion and data manipulation over student well-being.

Without meaningful judicial oversight or robust regulatory frameworks, schools have developed informal mechanisms to remove students from traditional educational settings while avoiding official disciplinary records. This loophole underscores the dangers of unchecked disciplinary discretion and highlights the urgent need for mechanisms that prevent schools from exploiting informal discipline to the detriment of students.

II. ABEYANCE AGREEMENTS IN SCHOOL DISCIPLINE

Although abeyance agreements are often framed as opportunities for students to avoid suspension or expulsion, they operate in an unregulated space that raises serious concerns about fairness, transparency, and systemic equity. This Section examines the dual character of abeyance agreements: first, their potential to offer students meaningful second chances; second, the significant risks they pose when implemented without safeguards, including coercion, procedural injustice, and the concealment of systemic inequities. Understanding both the opportunities and the dangers of abeyance agreements is critical to designing disciplinary practices that truly support, rather than exclude, vulnerable students.

A. Opportunities of Abeyance Agreements

When carefully implemented, abeyance agreements can offer students

graduation-rate-accountability.

[64] Jacobi & Clafton, *supra* note 19, at 1152–53.

[65] Holley, *supra* note 63.

a second chance to remain in school and avoid the long-term harms of suspension or expulsion. By pausing formal discipline, these agreements allow students to demonstrate their growth, meet behavioral expectations, avoid a permanent mark on their academic record, and ultimately avoid long-term penalties. Especially for students navigating trauma, disability, or other challenges, this can be an opportunity to reset without the stigma, disruption, or consequences of a suspension or expulsion on their record. They may also preserve relationships with educators, support continuity in learning, and reduce the risk of deeper entanglement with the juvenile justice system.

B. Risks of Abeyance Agreements

The promise of redemption through an abeyance agreement cannot be realized without robust safeguards. In the absence of regulation, students may be coerced into signing without fully understanding the terms or consequences and without meaningful ability to negotiate. While abeyance agreements hold potential as rehabilitative tools, their benefits should not come at the cost of due process, equity, and accountability.

1. Bypassing Due Process

A core concern with abeyance agreements is that they require that students waive procedural protections guaranteed to students accused of misconduct in school. As a result, abeyance agreements may enable schools to impose severe discipline without any form of due process. For example, a violated abeyance agreement could trigger a 10-day or less suspension without the *Goss* required notice, explanation of the evidence against the student, and without a hearing to rebut the accusations.[66] Moreover, the *Goss* Court acknowledged that "more formal procedures" may be required for longer suspensions or expulsions,[67] and abeyance agreements offer a path for schools to impose these more severe sanctions without any hearing or other procedural protection. Nevertheless, because students have no right to counsel in school disciplinary matters, many families may lack an adequate understanding the rights they are waiving or the long-term consequences of signing an abeyance agreement.

2. Coercion

The coercive nature of abeyance agreements becomes especially apparent when viewed through the lens of contract law. Abeyance agreements in school discipline closely resemble what Todd Rakoff

[66] Goss v. Lopez, 419 U.S. 565, 577–84 (1975).
[67] *Id.* at 584.

defined as contracts of adhesion, standard-form contracts presented on a take-it-or-leave-it basis with no meaningful opportunity for negotiation and conditions of unequal bargaining power.[68] Rakoff critiqued these contracts for their structural coercion and noted that these contracts' enforcement raises not only legal concerns about voluntariness, but normative questions about institutional power and fairness.[69]

Applying this lens to abeyance agreements reveals how they could operate as coercive disciplinary tools that obscure procedural safeguards behind the veneer of choice. Like consumers facing a contract drafted by a powerful entity, students and their families are typically presented with abeyance agreements by school officials at moments of acute vulnerability, often under the threat of immediate suspension or expulsion. The choice presented to students is illusory: accept the agreement, with its terms and waiver of due process, or face immediate punitive consequences. Just as Rakoff argued that adhesion contracts "allocate power and freedom between commercial organizations and individuals,"[70] abeyance agreements allocate disciplinary authority in ways that overwhelmingly favor institutions over students. This unequal distribution of power is made worse by legal precedent.

3. Obscuring Individual and Institutional Issues

Unlike suspensions and expulsions, abeyance agreements are not tracked in most state or federal reporting systems.[71] At a time when schools may face increased pressure to reduce exclusionary discipline, the opportunity to present more favorable data might incentivize districts to utilize abeyance agreements. Administrators may view abeyance agreements as efficient because they can resolve incidents quickly and redirect resources by avoiding an investigation or hearing on the allegations.[72] In doing so, schools often forgo investigations that might reveal a student's behavioral health needs, shortfalls of disability-related supports, or systematic patterns of institutional bias associated with disciplining students.[73] This is especially consequential for students with trauma, disabilities or other challenges, particularly because abeyance agreements typically do not offer supports or accommodations to help a child successfully complete the agreement.

This shortcut deprives students and schools of opportunities for long-term intervention and improvement. Finally, because entry and alleged

[68] Todd D. Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 HARV. L. REV. 1174, 1174, 1177 (1983).
[69] *Id.* at 1230–45.
[70] *Id.* at 1174.
[71] Perrodin, *supra* note 3, at 27; *see also id.* at 1427.
[72] Cox, *supra* note 1, at 1437.
[73] Perrodin, *supra* note 3, at 27–28.

violations of abeyance agreements operate in a legal gray zone, they obscure the true extent of exclusionary practices and prevent policymakers from designing effective and evidence-based reforms. Without clear standards or protections, these agreements offer superficial resolution while undermining due process, equity, and accountability.

III. LESSONS FROM JUVENILE PLEA AGREEMENTS

Abeyance agreements in school discipline bear striking similarities to plea agreements in the juvenile legal system: both ask young people to waive important rights in exchange for leniency. Yet while the juvenile system has developed at least some procedural safeguards to address the coercive pressures and developmental vulnerabilities inherent in plea bargaining, school abeyance agreements remain almost entirely unregulated. This Section examines how plea agreements operate in criminal and delinquency courts to illuminate the dangers of unprotected agreements and the need for reforms that could guide school discipline practices.

A. Plea Bargaining: Lessons on Coercion and Consent

In both criminal and juvenile delinquency cases, respondents typically choose between proceeding to trial or entering a plea agreement.[74] In practice, nearly all choose the latter: approximately 90% of criminal and juvenile convictions result from guilty pleas rather than trials.[75] Plea bargains offer a range of benefits for respondents, prosecutors, and courts.[76] In some jurisdictions, trials have become so rare that plea

[74] A plea agreement is also referred to as a "plea bargain" and is defined as"[a]n agreement between the prosecutor and criminal defendant to resolve a case without trial." *Plea Bargain*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[75] In a 2020 report, legal scholars from the Vera Institute of Justice reviewed existing empirical studies on plea bargaining in courts. They found that 90% of criminal convictions in state and federal courts nationwide were the result of plea bargaining. RAM SUBRAMANIAN, LÉON DIGARD, MELVIN WASHINGTON II & STEPHANIE SORAGE, IN THE SHADOWS: A REVIEW OF THE RESEARCH ON PLEA BARGAINING 1 (2020); *see also* Missouri v. Frye, 566 U.S. 134, 143 (2012) (noting that the vast majority of criminal defendants plead guilty rather than have trials).

[76] *See* Blackledge v. Allison, 431 U.S. 63, 71 (1977). The *Blackledge* Court explained:

> The defendant avoids extended pretrial incarceration and anxieties and uncertainties of a trial; he gains a speedy disposition of his case, the chance to acknowledge his guilt and a prompt start in realizing whatever potential there may be for rehabilitation. Judges and prosecutors conserve vital and scarce resources. The public is protected from the risks imposed by those charged with criminal offenses who are at large on bail while awaiting completion of criminal proceedings.

bargaining effectively defines the justice process itself.[77] As the U.S. Supreme Court has recognized, "criminal justice today is for the most part a system of pleas, not a system of trials."[78]

Despite its central role, plea bargaining remains largely unregulated. Courts require guilty pleas to be "knowing, voluntary, and intelligent,"[79] but this standard is often applied minimally. Although respondents must be informed of rights waived by pleading guilty, courts do not demand robust comprehension.[80] Judges typically conduct rote colloquies consisting of leading yes-no questions without probing respondents' actual comprehension.[81] Although respondents are informed of their rights and the consequences of a plea, courts rarely ensure that defendants genuinely understand the rights they are waiving or the long-term impact of their decisions.

Far from being an even negotiation, plea bargaining typically occurs in profoundly coercive settings. Prosecutors hold the unilateral power to offer or withhold plea deals, and courts have long permitted significant pressure so long as it falls short of fraud or physical harm.[82] Courts often frame plea agreements as private contracts, emphasizing voluntariness and mutual advantage,[83] but this framing obscures the stark power imbalance

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Id.

[77] In 2019, an American Bar Association task force of prosecutors, judges, defense attorneys, and academics analyzed plea bargaining nationwide. The report found that plea bargaining was the dominant method to resolve criminal trials, with some jurisdictions not having had a criminal trial in many years because they resolved all their cases through negotiated resolutions. A.B.A. CRIM. JUST. SECTION, PLEA BARGAIN TASK FORCE REPORT 6 (2023).

[78] Lafler v. Cooper, 566 U.S. 156, 170 (2012).

[79] *See* Boykin v. Alabama, 395 U.S. 238 (1969) (holding that a guilty plea must be knowingly and voluntarily entered); *see also* Brady v. United States, 397 U.S. 742, 748 (1970).

[80] *Boykin*, 395 U.S. at 243 & n.5 (holding that people must be told the constitutional rights waived by pleading guilty and that this understanding cannot be presumed from silence); Henderson v. Morgan, 426 U.S. 637, 647 (1976) (holding that a person must understand the nature of the charges against him but need not comprehend every element of the charged offense(s), only those elements considered critical).

[81] A.B.A. CRIM. JUST. SECTION, *supra* note 77, at 22.

[82] Weatherford v. Bursey, 429 U.S. 545, 561 (1977) (holding that a criminal defendant has no right to have a prosecutor offer them a plea offer); United States v. Goodwin, 457 U.S. 368, 380–383 (1982) (holding that no presumption of vindictiveness arises from a prosecutor's addition of new charges after a defendant demands a jury trial); United States v. Usher, 703 F.2d 956, 958 (6th Cir. 1983) (concluding that the person's guilty plea was not coerced when the person was required to plead guilty in order for his wife to get a reduced term).

[83] Puckett v. United States, 556 U.S. 129, 136 (2009) ("Although the analogy may not hold in all respects, plea bargains are essentially contracts."); Mabry v. Johnson, 467 U.S. 504, 508 (1984) ("Because each side may obtain advantages when a guilty plea is exchanged for sentencing concessions, the agreement is no less voluntary than any other bargained-for exchange."); Brady v. United States, 397 U.S. 742, 752 (1970) ("It is this

between prosecutors and respondents, especially when respondents are detained pretrial.[84] Like other contracts of adhesion, plea agreements reflect structural coercion and imbalanced bargaining power.[85]

These problems are magnified in the juvenile legal system. The vast majority of children plead guilty and waive adjudicatory hearings and appeals—sometimes without consulting an attorney.[86] Developmental differences further impair youths' ability to understand their rights, weigh long-term consequences, and resist pressure from authority figures.[87] They are also particularly vulnerable to prosecutorial pressure and paternalistic advice from their own defense attorneys.[88] Many children enter plea negotiations expecting procedural unfairness and believing that they cannot prevail.[89] Although courts nominally require pleas to be knowing, voluntary, and intelligent, juvenile plea colloquies are often perfunctory and developmentally inappropriate, relying on legalistic language, leading questions, and a tone that discourages clarification.[90] As a result, many children waive critical rights and accept life-altering consequences without truly understanding the choices they are making. These realities highlight the dangers of relying on behavioral contracts without robust safeguards—particularly when children are pressured to surrender fundamental rights.

B. Deferred Disposition Agreements: Structuring but Not Solving Second Chances

Recognizing the collateral consequences and long-term harms associated with a delinquency adjudication, some jurisdictions have developed alternative forms of plea agreements that divert children from the juvenile legal system without requiring adjudication. One such model is the Deferred Disposition Agreement (DDA) used in the District of Columbia. Under a DDA, a child agrees to comply with specified rehabilitative conditions—such as attending school, avoiding re-arrest, participating in services, or making restitution—for a period of time.[91] If

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mutuality of advantage that perhaps explains the fact that, at present, well over three-fourths of the criminal convictions in this country rest on pleas of guilty. . .").

[84] SUBRAMANIAN, *supra* note 75, at 15 ("Detained people have strong incentives to cut a quick deal in order to resolve their cases as soon as possible.").

[85] Rakoff, *supra* note 68, at 1230–45.

[86] Jennifer L. Woolard, Kristin Henning & Erika Fountain, *Power, Process, and Protection: Juveniles as Defendants in the Justice System*, 51 ADVANCES IN CHILD DEV. & BEHAVIOR 171, 172–73, 184–85 (2016).

[87] *Id.* at 181–83.

[88] *Id.* at 202–03.

[89] *Id.* at 194–96.

[90] *Id.* at 200–01.

[91] Deferred disposition agreements are the juvenile legal system's term for deferred sentencing agreements. CRIM. JUST. COORDINATING COUNCIL FOR THE DIST. OF

the child successfully complies, the charges are dropped and no adjudication is added to the child's record.[92] A requirement to enter this agreement is that the child waive their right to a trial and appeal on the charges, so if they fail to comply, they would be immediately sentenced for the charges.[93] By deferring disposition, DDAs seek to preserve a pathway out of system involvement for youth who demonstrate compliance and do not reoffend. These agreements represent an important step toward structuring leniency in a manner that promotes rehabilitation.

Despite their promise, DDAs are far from a complete solution. Data from the Criminal Justice Coordinating Council's 2018 cohort analysis show that, while diversion programs like DDAs achieve lower recidivism rates than deeper-end system interventions, they still leave significant risks unaddressed. Among children who completed a DDA or similar agreement in 2018, more than half were rearrested within two years during or after the DDA period.[94] Several factors may contribute to these limitations. For example, many children could face persistent unmet needs, such as unstable housing, untreated disabilities, or inadequate educational support. These children may also be at higher risk of re-entering the system through the school-to-prison pipeline, especially if they attend a school with a higher presence of school resource officers, exclusionary discipline, or pushout practices. These outcomes suggest that, although diversion can interrupt the cycle of system-involvement for some, it cannot, by itself, dismantle the deeper structural and social inequities that drive children's contact with the juvenile legal system.

Together, these insights from the juvenile legal system offer both a cautionary tale and a foundation for reform. They demonstrate the urgent need to structure conditional agreements with clear safeguards, individualized supports, and systemic equity at the center.

IV. REIMAGINING ABEYANCE AGREEMENTS

Abeyance agreements, if properly designed, could provide students with meaningful opportunities to remain connected to their education while addressing behavioral concerns. Yet without robust safeguards, they risk replicating the same dangers identified in the juvenile legal system: coercion, procedural inequity, and systemic exclusion. To transform abeyance agreements into fair and effective tools, schools must structure them with protections that center students' developmental needs, educational rights, and equity. This Section outlines three categories of

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COLUMBIA, BRIEF: DIVERSION AND DEFLECTION IN THE DISTRICT OF COLUMBIA 1, 3 (2022) (describing deferred sentencing agreements).

[92] *Id.*

[93] *Id.*

[94] CRIM. JUST. COORDINATING COUNCIL FOR THE DIST. OF COLUMBIA, JUVENILE RECIDIVISM: A 2018 COHORT ANALYSIS 8–9 (2022).

reform: (1) prerequisites to entry to safeguard voluntariness and informed consent; (2) conditions centered on student development and support; and (3) a substantial compliance standard for evaluating alleged violations.

A. Pre-requisites to Entry

To prevent the coercion and uninformed entry, abeyance agreements must include basic prerequisites that ensure students knowingly, voluntarily, and intelligently consent. These baseline requirements are safeguards against coercion and increase the likelihood that students will be comply with the terms of the agreement. Clear preconditions can help ensure that agreements are tailored to the individual student's needs and circumstances, rather than imposed as a one-size-fits-all disciplinary shortcut. In turn, these safeguards support equity and educational outcomes by promoting student understanding, buy-in, and success.

1. Knowing, Voluntary, and Intelligent Agreements

Just as courts require that children enter conditional agreements knowingly, intelligently, and voluntarily, schools should follow a similar standard for abeyance agreements. In the juvenile legal system, a plea is valid only if the child understands the rights being waived, the consequences of their decision, and the available alternatives. Given that abeyance agreements similarly require students to forfeit procedural protections—often in similarly high-stakes disciplinary situations—schools should ensure that students comprehend the full scope of these agreements before they take effect. This should include understanding the conditions and consequences of the agreement in ways that go beyond a plea colloquy, such as by using various open-ended questions.

A student's age, developmental stage, cognitive capacity, and disability status are critical factors in determining whether they can meaningfully consent to an abeyance agreement. Administrators should ensure that students can ask questions, receive clear explanations in developmentally appropriate language, and access additional support or accommodations to facilitate informed decision-making. To protect against coerced or uninformed waivers, schools should also present abeyance agreements in a manner tailored to the individual student's learning capacity and provide accommodations where necessary.

2. Notice and Explanation of Charges Requirements

In the juvenile legal system, a child receives clear notice of the charges against them when the government files a petition against the child. The child's defense counsel is also expected to conduct a thorough investigation of the government's case and explain the evidence against a

child before a child enters a conditional agreement.[95] Like these practices and the *Goss* notice and explanation requirements,[96] students should receive both a written notice of the alleged misconduct and a clear explanation of the evidence before being asked to enter into an abeyance agreement. This procedure would ensure that students and their families have the necessary information to make an informed decision about whether to contest the allegations or enter into the agreement.

Additionally, abeyance agreements should not be offered in cases where allegations are unsubstantiated. In the juvenile legal system, plea agreements must be supported by a factual basis—an evidentiary foundation ensuring that the charges are not arbitrary or unfounded. Schools should be held to a comparable standard in which they are prohibited from using abeyance agreements when a complainant cannot present any credible to support the alleged misconduct. Without such a safeguard, schools could use abeyance agreements to pressure students into waiving their rights in response to baseless allegations and effectively undermine the integrity of the disciplinary process. Implementing this protection would prevent coercive or unjust agreements while ensuring that students receive due process before making decisions that could significantly impact their educational futures.

3. Representation by an Independent Education Advocate

One of the most fundamental protections in the juvenile legal system is the right to legal representation, which ensures that young defendants receive informed guidance from an advocate solely committed to their best interests. School administrators provide insufficient counsel for students because these administrators have an institutional interest in maintaining order and reducing liability. While legal representation is not currently required in school discipline proceedings, the stakes of abeyance agreements—specifically the potential for long-term exclusion from a student's school—necessitate similar counsel for students.

Abeyance agreements should be presumptively invalid if a student enters one without the opportunity to consult an independent educational attorney or advocate. This recommendation is modeled on the Individuals with Disabilities Education Act (IDEA), which recognizes a parent's right to counsel in hearings and appeals related to the child's provision of services for the child's disability.[97] If the IDEA acknowledges that legal

[95] NAT'L JUV. DEF. CTR., NATIONAL JUVENILE DEFENDER STANDARDS 68–70 (2012).
[96] Goss v. Lopez, 419 U.S. 565, 577–84 (1975) (requiring notices of the charges against the student and an explanation of the evidence against the student).
[97] 20 U.S.C. § 1415(h)(1) (recognizing that any party to a hearing or appeal related to the provision of services for a child with a disability has "the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities").

or expert support is essential even in routine educational planning, the same logic applies—if not more forcefully—when a student is asked to waive procedural rights and accept potentially exclusionary disciplinary consequences. Presumptive invalidity not only incentivizes school districts to build in protective procedures but also affirms a basic principle: no child should face exclusion from education without a fair process and an informed advocate in their corner.

Legal representation in abeyance agreements is crucial to address the significant power imbalance between students and school officials. Without an advocate, students—particularly those from marginalized communities—are forced to navigate high-stakes disciplinary decisions alone, often with insufficient time or resources to evaluate their options. A trained legal representative would help level the playing field by clarifying the implications of an abeyance agreement, reviewing evidence, and advising the student on whether to accept the agreement or contest the allegations in a hearing. Additionally, an attorney or advocate could negotiate more equitable terms and ensure that the agreement is not excessively punitive and that conditions are suited to the student's circumstances and disability. Just as legal representation in juvenile court helps prevent coerced and uninformed plea deals, representation in school discipline matters would shield students from being pressured into agreements that may adversely affect their education and future opportunities.

B. Individualized and Nurturing Conditions

To avoid simply setting students up for failure—as too often happens in diversion programs—abeyance agreements must provide individualized and developmentally appropriate supports. The juvenile legal system was founded on a rehabilitative ideal: that young people, still in the process of development, should be offered opportunities for growth rather than subjected to strictly punitive measures.[98] Abeyance agreements in school discipline should reflect a similar commitment. Emerging research on effective school discipline underscores the importance of this approach. For instance, restorative justice practices and trauma-informed interventions have been shown to improve school climate and student engagement, reduce exclusionary discipline, and narrow racial discipline disparities.[99]

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[98] Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 141 (1997) ("The creation at the turn of the century of a separate system of juvenile justice, committed to rehabilitation of young offenders, was a product of the social reform movement of that period.").

[99] *See* Anne Gregory, Kathleen Clawson, Alycia Davis & Jennifer Gerewitz, *The Promise of Restorative Practices to Transform Teacher-Student Relationships and Achieve Equity*

Unlike courts, schools are not merely sites of adjudication—they are learning environments charged with fostering students' intellectual, emotional, and social development. As such, the central aim of abeyance agreements should be to keep students connected to their education while constructively addressing behavioral concerns. When designed with care, these agreements should prioritize providing students with targeted supports rather than serving as punitive mechanisms that fast-track exclusion.

To achieve this goal, the conditions included in abeyance agreements must be individualized and responsive to each student's unique circumstances. For example, instead of vague or overly burdensome requirements, a school might condition the agreement on a student's participation in after-school tutoring or mentorship programs. Schools should consider including supports that help students develop essential skills like conflict resolution and emotion regulation. These supports are also in line with legislative priorities in most states; at least 37 states and the District of Columbia identify or encourage non-punitive alternatives to suspension and expulsion, such as restorative justice, counseling, peer mediation, community service, conflict resolution, and positive behavioral interventions.[100] Such interventions are not only more aligned with a school's educational mission; they are also more effective.

It is especially critical that abeyance agreements be aligned with the needs and legal protections of students with disabilities. When applicable, the terms of an agreement must be consistent with a student's Individualized Education Plan (IEP) or 504 Plan. This includes developing the agreement in coordination with the student's special education team to ensure the conditions are reasonable, attainable, and aligned with their documented accommodations. Conditions concerning behavior, attendance, and compliance must also be calibrated to the student's abilities. Otherwise, the agreement risks setting the student up for failure and compounding existing inequities. Without these safeguards, students with disabilities face an elevated risk of being labeled noncompliant, exacerbating disproportionate exclusion and denying them the educational opportunities they deserve.

By crafting abeyance agreements that are individualized, supportive, and rooted in a rehabilitative ethos, schools can transform them from exclusionary stopgaps into meaningful second chances that advance educational equity.

C. Evaluating Alleged Violations Through a Substantial Compliance

in School Discipline, 26 J. EDUC. & PSYCH. CONSULTATION 325, 328–29 (2016).

[100] Bryan Kelley, Carlos Jamieson & Zeke Perez, *Which Nonpunitive Approaches, if any, Are Outlined as Alternatives to Suspension and/or Expulsion?,* EDUC. COMM'N OF THE STATES (May 2021), https://reports.ecs.org/comparisons/school-discipline-policies-04.

Standard

Many abeyance agreements include vague, sweeping conditions—such as "obey all school rules" or "attend all classes on time"—that fail to account for the developmental and environmental realities students face. A single tardy, missed assignment, or verbal outburst could trigger immediate reinstatement of exclusionary discipline, regardless of the student's overall effort or circumstances. This rigidity undermines the rehabilitative promise of abeyance agreements and reinforces the very dynamics—unjustified removal, racial disparity, and educational exclusion—that they are purportedly designed to avoid.

To protect students from exclusion based on minor or technical missteps, schools should evaluate alleged violations of abeyance agreements under a substantial compliance standard to ensuring that the school's response is proportionate, rehabilitative, and just. The Interstate Commission for Juveniles defines a "substantial compliance standard" as "[s]ufficient compliance" by a youth with terms and conditions of supervision "so as to not result in initiation of revocation of supervision proceedings."[101] In the juvenile legal system, this standard would allow decisionmakers—judges, prosecutors, and probation officers—to assess a child's conduct holistically, rather than revoking pre-trial release, plea agreements, or probation for a minor, technical violation.

Similarly, a substantial compliance would allow schools the discretion to view minor missteps in the context of a youth's overall progress and thereby promote accountability and continued engagement. Instead of automatically reinstating suspension or expulsion for any infraction, educators should assess whether the student has substantially complied with the agreement's core objectives. Has the student made good faith efforts to attend school, follow behavioral expectations, and engage positively with teachers and peers? Has their conduct shown improvement, even if not perfection? These are the questions that center rehabilitation and support. A substantial compliance standard allows schools to distinguish between isolated or non-serious conduct—like being tardy, missing an assignment, or having a minor behavioral lapse—and more serious or repeated breaches of school safety or agreement terms.

Importantly, this standard aligns with trauma-informed and disability-accommodating frameworks that are increasingly recognized as best practices in education. Trauma can amplify the normative impairments of adolescence and contribute to greater difficulty with social interactions,

[101] INTERSTATE COMMISSION FOR JUVENILES, *Rule 1-101: Definitions*, https://juvenilecompact.org/legal/rules-step-by-step-table-of-contents/rule-1-101-definitions (last accessed Apr. 10, 2025).

impulse control, and delated gratification.[102] Similarly, students with disabilities, including ADHD, autism, or learning disorders, may struggle to meet uniform standards of behavior or attendance without reasonable support and flexibility. Applying a substantial compliance standard allows schools to respond with empathy and individualized consideration, rather than relying on zero-tolerance mechanisms that exacerbate harm. It also reflects the intent of laws like the Individuals with Disabilities Education Act (IDEA), which require educational institutions to accommodate disability-related needs in both instructional and disciplinary contexts.

When rooted in a substantial compliance framework, abeyance agreements can become genuinely supportive tools. They offer students structure without rigidity, accountability without cruelty, and a chance to grow in environments that recognize their humanity. This framework ensures that the enforcement of abeyance agreements reflects the same principles of equity, flexibility, and individualized support that define just and inclusive educational systems.

CONCLUSION

Abeyance agreements offer a powerful opportunity to divert students from exclusionary discipline and keep them connected to their education. But without meaningful safeguards, they risk operating as coercive shortcuts that strip students of due process, deepen systemic inequities, and fuel the school-to-prison pipeline. Lessons from the juvenile legal system—particularly the dangers of unregulated plea bargaining and the partial successes of deferred disposition agreements—reveal the urgent need for protections that are developmentally appropriate, equity-driven, and transparent.

Reforming abeyance agreements demands more than technical fixes. It requires a reimagining of school discipline itself: shifting from punitive control toward nurturing growth. Agreements must be built on clear, voluntary consent; structured with individualized supports that recognize trauma, disability, and developmental needs; and enforced through a substantial compliance standard that honors effort over perfection.

When grounded in fairness and support, abeyance agreements can become more than a procedural tool. They can serve as instruments of educational justice by helping schools protect individual rights while dismantling exclusionary practices that disproportionately harm marginalized students. In doing so, schools can fulfill their true mission: not to police students out, but to welcome them in—to nurture every child's potential, dignity, and right to belong.

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[102] Eduardo Ferrer, *Transformation through Accommodation: Reforming Juvenile Justice By Recognizing and Responding to Trauma,* 53 AM. CRIM. L. REV. 549, 563–73 (2016).