

**A Guide to
Suspensions & Expulsions
in the
Michigan Public Schools**



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I. Introduction

The Revised School Code of the State of Michigan (Public Act 289 of 1995) mandates that local school districts have certain duties to perform related to the operation of the school and they include, but are not limited to:

“Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity.” [380.11a (3) (b)]

“...shall develop and implement a code of student conduct and shall enforce its provisions with regard to pupil misconduct in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises.” [380.1312 (8)]

In addition, the Revised School Code contains a multitude of other sections and subsections regarding the suspension and expulsion of students related to the sections noted above.

The information presented in this document has been written and reproduced as a guide for public school administrators and board members as they navigate through these complex issues.

The sections of the Revised School Code that address these issues are: 380.11a, 3b; 380.1301; 380.1309; 380.1310; 380.1311a; 380.1311b; 380.1312; and 380.1313. They may be found in Appendix A.

MASSP and MASB continue to support good faith compliance with all sections of the School Code.

This publication is not intended to provide legal advice. Please consult school district counsel for specific guidance.

II. Due Process

The authority of a local school board and its administration to discipline students is limited by the rights guaranteed students by both the Constitution of the United States and Michigan. The Fourteenth Amendment to the U.S. Constitution demands that the state, or any entity that is part of the state, not deny a person, life, liberty, or property unless due process has been afforded. In the landmark case of *Goss v Lopez*, 419 U.S. 565 (1975), the U.S. Supreme Court applied the concept of due process to school disciplinary measures. The Court concluded that due process applies to school discipline because education is a property right when a state maintains a public school system and requires children to attend. Therefore, Michigan's constitutional right to a free public education (Article 8, Section 2) coupled with the Revised School Code's compulsory attendance provisions give students a property interest in attending school, which prevents schools from depriving students of that interest without due process of law.

There are two aspects of due process, which are referred to as substantive due process and procedural due process. Substantive due process ensures that a disciplinary rule is reasonable and fundamentally fair and furthers a legitimate goal. Procedural due process ensures that fair and proper procedures are followed prior to the denial of a right.

Substantive Due Process

Substantive due process prevents arbitrary and abusive actions by the state, which are unrelated to a legitimate state interest. In other words, the actions would be characterized as irrational and beyond the authority of the state. Thus, in the context of school discipline, a substantive due process claim by a student will succeed only in the case where there is no rational relationship between the punishment and the offense.

Usually a school's interest in disciplinary situations is to maintain order in the school or to protect students. Therefore, in order to pass the substantive due process test, a school must show its rules are reasonably related to these purposes.

For example, a student surreptitiously spikes the punch bowl at a school dance with grain alcohol, with several students, none of whom having any reason to know that alcohol has been added to the punch, taking a drink. Suppose that the school has a zero tolerance policy on consumption or possession of alcoholic beverages on school property or at school activities. The school's code of conduct mandates a suspension or expulsion, but it does not specifically provide that the alcohol must be knowingly possessed or consumed. Suspending the students, who drank from the punch bowl, not realizing that alcohol had been added, would not rationally advance the school's legitimate interest in preventing underage students from drinking alcohol on school premises. Thus, disciplining a student under these circumstances would likely constitute a substantive due process violation.

The case of *Seal v Morgan*, 229 F3d 567 (CA 6, 2000), also illustrates a substantive due process violation. In *Seal*, a board of education expelled a student based upon a zero tolerance policy when a friend's knife was found in the student's glove compartment. The student complained that the board expelled him without considering whether he even knew the knife had been placed in the glove compartment. The board argued that the district was compelled to expel the student under the policy whether he knew the knife was there or not. The court concluded that suspending or expelling a student for weapons possession, pursuant to a zero tolerance policy, even if the student did not knowingly possess any weapon, would not be rationally related to any legitimate state interest. In reaching this conclusion, the court stated that a "board may not absolve itself of its obligation, legal and moral, to determine whether students intentionally committed the acts for which their expulsions are sought by hiding behind a zero tolerance policy that purports to make the students' knowledge a non-issue."

Procedural Due Process

Procedural due process guarantees a right to a fair procedure or set of procedures before one can be deprived of property by the state. As noted above, the U.S. Supreme Court applied the concept of due process to school disciplinary measures in *Goss v Lopez*. The Court concluded that procedural due process requires a school to use fair procedures before taking away a student's property interest in attending school. Included in procedural due process are notice that the behavior may constitute a violation, notice of the charge against the student, and the opportunity to be heard in response to the charge.

The following example illustrates a denial of procedural due process. Suppose a teacher noticed strikingly similar answers on two essay tests (both graded as “A’s”) that led the teacher to suspect that someone had been cheating. Without bringing up the subject of cheating, the teacher discussed the test informally with the two students and casually asked them about their method of preparation. From this conversation, the teacher learned that the same individual was tutoring the students. Although satisfied with this explanation, the teacher discussed the matter with the high school principal, who questioned the truthfulness of the students. Soon after the discussion, the principal summarily suspended the students for two days without explaining to them the basis for his decision. In this case, the students’ procedural due process rights were violated, because they never received notice of a charge and were denied the opportunity to be heard in response to a charge.

The extent of other procedures due depends on the nature of the interest being taken away. Thus, a permanent expulsion requires more procedural protection than a three-day suspension. The procedures required for suspensions or expulsions will be discussed later in the guide.

It is important to note that the procedural due process rights of students apply only when they are totally excluded from the educational process. For example, teachers are still free to impose minor forms of classroom discipline, such as admonishing students, requiring special assignments, restricting activities, and denying certain privileges, without being subjected to the strictures of due process scrutiny.

However, it is possible that a court could conclude that “snap suspensions,” which are discussed on pages 6 - 7, require some kind of minimal hearing. See *Suspensions of 10 Days or Less*. The issue would be whether the punishment of a “snap suspension” is a significant intrusion on the student’s property interest of receiving an education. For example, one federal district court has recognized that the punishment of “isolation suspension” (isolating individual students in rooms other than classrooms) implicates a student’s property interest and requires a school district to afford students procedural due process prior to administering the punishment. *Orange v County of Grundy*, 950 F Supp 1365 (ED Tenn 1996). Thus, because this issue is debatable, a minimal due process hearing should be held prior to a student receiving a “snap suspension.”

III - Suspensions and Expulsions

The Revised School Code permits the removal of a student from school as a disciplinary measure. In the code, removals are referred to as suspensions, expulsions, or permanent expulsions, depending on the length of the removal.

Although not explicitly defined in the code, suspensions do not usually exceed 10 days, based on the United States Supreme Court decision in *Goss v Lopez*. A district could certainly impose a long-term suspension for a definite period of time (e.g., 30 days), but the student would then be entitled to greater hearing rights than those afforded to students who are suspended for 10 days or less. See *Section IV, Hearings Procedures*.

Generally, expulsion is the removal or exclusion of a student from school for a school year, for the balance of a school term, or for a maximum number of days or other period that may carry over beyond the current school term. **Further, Michigan Law requires a school district to permanently expel a student who possesses a dangerous weapon, commits arson or criminal sexual conduct, or physically assaults a school employee, volunteer, or contractor.** A permanent expulsion prevents a student from enrolling in any other public school unless he or she is reinstated after serving the expulsion for a specified number of days as provided by law. The student may also be placed in an alternative education program appropriate for permanently expelled students or in a strict discipline academy.

The following information describes the provisions in the Revised School Code that refer to suspending or expelling students for certain, specific acts of misconduct.

Teacher Snap Suspensions- Section 1309

This section of the Revised School Code permits a teacher to suspend a student from a classroom, subject, or activity for up to one day. **Boards of education are required to adopt a local policy specifying the types of conduct for which a student may be immediately suspended by a teacher.**

A student suspended under these circumstances cannot return to the class, subject, or activity during that school day without the concurrence of the teacher who suspended the student and the school principal. If a student is retained in the school, steps must be taken to ensure that he or she is always under appropriate supervision.

As soon as possible after the suspension, **the teacher must invite** the student's parent or guardian to a parent-teacher conference to discuss the suspension. The conference should also include, whenever practicable, a school counselor, school psychologist, or school social worker. And, **upon request by the teacher** or the student's parent or guardian, **a building administrator must attend the meeting.**

Student on Student Physical Assaults- Section 1310

If a student enrolled in grade six or above commits a "physical assault" "at school" against another student and the assault is

reported to the school board, superintendent, or building principal, then the board or its designee must suspend or expel the student from the district for up to 180 days. Physical assaults committed by students in grade five or below would be addressed by applying the school's student code of conduct.

It is recommended by the Statewide School Safety Information Policy that if any of the following occur during a physical assault, the incident be reported to the police: the victim alleges injury; there is injury to the victim and/or suspect, which requires medical attention; or the suspect used a weapon during the physical assault.

“At school” means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises.

“Physical assault” means intentionally causing or attempting to cause physical harm to another through force or violence. An example of an “attempt to cause physical harm” would be if a student took a swing at a teacher but missed.

Verbal Assaults and Bomb Threats- Section 1311a(2)

A school board, or its designee, is required to suspend or expel a student enrolled in grade six or above for a period of time as determined by the board or designee if the student:

- commits a verbal assault, as defined by school board policy, at school against an employee, volunteer or contractor of the school district and the assault is reported to the school board, superintendent, or building principal by the victim, or if the

- victim is unable to report the verbal assault, by another person on the victim's behalf; **or**
- makes a bomb or similar threat directed at a school building, other school property, or a school-related event.

A board of education could define a verbal assault as “any willful verbal, written, or electronically transmitted threat that is intended to place another in fear of immediate physical contact that will be painful and injurious, coupled with the apparent ability to execute the act.” Any definition could be as limited or as all inclusive as a district's board would prefer, but it would be prudent to have the definition cover written threats as well as spoken threats.

This section explicitly states that, during the period of the expulsion, a school district is not required to enroll a student who was expelled from another school district for committing a verbal assault or making a bomb threat.

Expulsions for Weapons, Arson, and Criminal Sexual Assault- Section 1311

A board, or its designee, **must permanently expel a student**, subject to possible reinstatement, if the student:

- **commits “arson”** in a school building or on school grounds;
- **commits “criminal sexual conduct”** in a school building or on school grounds; or
- **possesses a “dangerous weapon”** in a weapon free school zone.

Arson

“Arson” means a felony conviction of chapter X of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80, which includes seven different types of arson offenses. Because each offense includes specific, technical elements that must be proven in order to find someone guilty of arson, it is unrealistic to expect administrators or board members to make a determination on whether or not a student actually committed felony arson. Thus, if an administrator *suspects* a student committed felony arson, the incident should be reported immediately to local law enforcement authorities who would then have the responsibility of determining whether or not the student should be charged with felony arson. Generally, if a student starts a fire or attempts to start a fire on school property without authorization, or assists another in starting or attempting to start a fire, it is reasonable to suspect that the incident may involve arson.

However, the administration or school board does not have to wait for the final legal disposition of the student’s case before pursuing disciplinary action. Under such circumstances, the administration or the board should still expel the student by enforcing its own rules. For example, under a district’s code of conduct, the student could likely be disciplined for vandalism, for jeopardizing the safety of other students, or for arson, as independently defined by the school district in the code. But, until the student is actually convicted of felony arson, any disciplinary action taken by the district could not result in a *permanent* expulsion. Thus, prior to a conviction for felony arson, a student expelled for lighting a fire in a trash can may still have the opportunity to enroll in another school if accepted.

Criminal Sexual Conduct

“Criminal sexual conduct” (CSC) means:

- First degree CSC;
- Second degree CSC;
- Third degree CSC;
- Fourth degree CSC;
- Assault with intent to commit CSC involving sexual penetration;
or
- Assault with intent to commit second degree CSC.

These types of CSC will always involve a nonconsensual “sexual penetration” or the unconsented touching for a sexual purpose of a person’s “intimate parts” or clothing covering those parts. “Sexual penetration” includes oral sex or the insertion of any object into a person’s genital or anal openings. A person’s “intimate parts” include the breast, buttock, or genital areas.

Further, the following *consensual* acts would result in CSC: (1) sexual penetration involving a person under the age of 16; (2) consensual sexual touching involving a person under the age of 13; and (3) consensual sexual touching of a person between the ages of 13 and 16 if the perpetrator is five or more years older than the victim.

Any suspected CSC needs to be reported immediately to local law enforcement authorities, who will investigate the matter to determine if the circumstances merit a CSC charge. And, in the meantime, the district should enforce its own code of conduct and pursue disciplinary and corrective action to address the situation. If the student is subsequently convicted of CSC, then any previous

disciplinary action relating to the incident must be reconsidered to reflect that the student has been permanently expelled.

Exceptions for possessing a weapon

A school board is not required to expel a student for possessing a weapon if the student establishes in a clear and convincing manner at least one of the following:

- The object or instrument possessed by the student was not possessed for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.
- The weapon was not knowingly possessed by the student.
- The student did not know or have reason to know that the object or instrument constituted a dangerous weapon.
- The weapon was possessed by the student at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

The question of whether a school board or its designee is *required* to apply the above exceptions is subject to debate. Yet, a review of the legislative history of the weapons law leads one to believe that the Legislature intended the exceptions to be discretionary. In 1994, when the Legislature initially passed the law, it read that the school board, or its designee, “shall expel the pupil permanently, subject to possible reinstatement under subsection (5), *unless* the pupil establishes in a clear and convincing manner at least 1 of the following [exceptions]....” The very next year, the Legislature amended the law by including the following: “However, a school board is not required to expel a pupil for possessing a weapon if the

pupil establishes in a clear and convincing manner at least 1 of the following [exceptions]....” The word “unless” was also deleted.

Thus, it seems that the original language did require the exceptions to be applied if established in a clear and convincing manner. But, because the subsequent amendment had the effect of eliminating the previously proscriptive tone of requiring the application of the exceptions, it appears that the Legislature was consciously making the exceptions discretionary when it amended the law to read as it does today.

The “knowingly possessed” exception, however, should always be applied in order to meet the requirements of substantive due process. As discussed in Section II, the *Seal v Morgan* case tells us that suspending or expelling a student for weapons possession, even if the student did not knowingly possess the weapon, would not be rationally related to any legitimate state interest. As a result, such disciplinary action would violate the student’s right to substantive due process under the Fourteenth Amendment to the U.S. Constitution.

What is a “dangerous weapon”?

The term “dangerous weapon” is defined as a firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by mechanical device, iron bar, or brass knuckles. The Revised School Code defines the term “firearm” by referring to the *Gun Free Schools Act 1994*.

In defining “firearm” the federal *Gun-Free Schools Act of 1994* refers to another section of federal law which defines “firearm” as:

- Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive;
- The frame or receiver of any such weapon;
- Any firearm muffler or firearm silencer; or
- Any destructive device.

Under the above definition, is a BB gun or a paint ball gun a dangerous weapon?” No. Neither gun expels its projectile by the action of an explosive. Then, if that is the case, are schools limited by this definition when it comes to disciplinary action? No.

This issue was addressed in *Davis v Hillsdale Community School District*, 226 Mich App 375; 573 NW 2d 77 (1997). In this case, the school adopted a definition of “dangerous weapon” that closely followed the definition in the law, but the district’s definition also included the following: “For the purposes of application and enforcement of this policy, a BB gun is considered to be a ‘firearm.’” A student who was expelled for possessing a BB gun on school property argued that the school was bound by the definition of “firearm” found in the *Gun Free Schools Act*, which would not extend to cover a BB gun.

The Court of Appeals sided with the school district, finding that a school board has the power to mandate a permanent expulsion in its weapons policy for possession of a BB gun on school property. The court reasoned that while the Revised School Code “does not specify mandatory permanent expulsion for possession of a BB gun, it does not expressly prohibit such action. Under these circumstances, defendant was within its broad discretion in promulgating a rule that

mandates permanent expulsion for possession of a BB gun on school property.”

Weapon Free School Zone

“Weapon Free School Zone” means school property and a vehicle used by a school to transport students to or from school property.

“School Property” means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

Physical Assaults Against Employees, Volunteers, or Contractors- Section 1311a

If a student enrolled in grade six or above commits a physical assault at school against an employee, volunteer or contractor of the school district and the assault is reported to the school board, superintendent, or building principal by the victim, or if the victim is unable to report the assault, by another person on the victim’s behalf, then the board, or its designee, must expel the student from the school district permanently, subject to possible reinstatement. Students below grade six are not covered by this law, but they could certainly still be disciplined according to a school’s code of conduct.

“At school” means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises.

“Physical assault” means intentionally causing or attempting to cause physical harm to another through force or violence.

Post-Expulsion

If a student is **permanently** expelled from school for committing one of the above offenses, the district must ensure that, within three days after the expulsion, an official of the school district refers the student to the appropriate county family independence agency or county community mental health agency. The student’s parent or legal guardian must be notified of the referral. The student must be notified if he or she is at least age 18 or is an emancipated minor.

Furthermore, the *School Safety Response Guide* requires school districts to report certain incidents to local law enforcement authorities. Accordingly, the above offenses that mandate a permanent expulsion also require the school district to report the incident/offense to law enforcement officials and prosecutors.

Notwithstanding special education students, the district is not responsible for providing a suitable education program during the period of the expulsion. This responsibility lies with the student’s parent or legal guardian.

Reinstatement

Although the law calls for the “permanent” expulsion of a student, the law does provide a process for petitioning for reinstatement. A petition for reinstatement may be submitted to the expelling school board, or to another school board if the expelling school board denies the petition for reinstatement. It is the sole responsibility of the parent

or legal guardian or, if the student is at least age 18 or is an emancipated minor, of the student to prepare and submit the petition. A school board is not required to provide any assistance in preparing the petition. *See Appendix C for a sample petition for reinstatement form created by the Michigan Department of Education.*

A school board may also offer a conditional reinstatement, which would require the petitioner to agree in writing to specific conditions before his or her reinstatement. The conditions could include a behavior contract; participation in or completion of an anger management program or other appropriate counseling; periodic progress reviews; or specified immediate consequences for failure to abide by a condition.

The timelines for initiating a petition for reinstatement varies depending on which grade the student was enrolled in at the time of the expulsion. The parent or legal guardian of a student enrolled in grade five or below who was expelled for possessing a dangerous weapon may submit a petition for reinstatement any time after 60 school days following the date of the expulsion. If granted, the student could not enroll in the district until 90 school days after the expulsion. For permanent expulsions relating to arson or criminal sexual conduct offenses, reinstatement petitions for students in grade five or below can be initiated at any time following the expulsion. The student, however, would still have to serve at least 10 days of the expulsion before being reinstated.

If a student in grade six or above commits any of the above offenses that require a permanent expulsion, the student, if 18 years old or emancipated, or the student's parent or guardian may initiate a petition for reinstatement 150 school days after the date of the

expulsion. The student could then be reinstated by the school board after serving 180 days of the expulsion.

Reinstatement petitions are reviewed by a committee appointed by the district's board of education. The committee must include two school board members, one school administrator, one teacher, and one parent of a student in the school district. After reviewing the petition, the committee is required to submit a recommendation to the school board, which may include a recommendation for unconditional reinstatement, for conditional reinstatement, or against reinstatement. The recommendation, which must be based on the consideration of seven factors outlined in MCL 380.1311(e), must also be accompanied by an explanation of the reasons for the recommendation and any recommended conditions for reinstatement. After receiving the committee's recommendation, the school board is required to act on it no later than the board's next regularly scheduled meeting.

Does a suspended or expelled (non-permanent) student have a right to enroll in another school district?

If a student commits a violation of the Revised School Code that requires a *permanent* expulsion, the code explicitly prohibits the expelled student from enrolling in any other public school in Michigan, subject to possible reinstatement, and with the exception of an alternative education program appropriate for permanently expelled students or a strict discipline academy.

Further, Sections 1310 and 1311a of the Revised School Code (MCL 380.1310, 380.1311a), which require suspensions or non-permanent expulsions for physical and verbal assaults and bomb threats, state

that “a school district is not required to allow an individual expelled from another school district under this section to attend school in the school district during the expulsion.” And, Sections 105 and 105c of the State School Aid Act (MCL 388.1705 and 388.1705c) additionally state that, under schools of choice, “[a] district may refuse to enroll a nonresident applicant if the applicant is, or has been within the preceding 2 years, suspended from another school or if the applicant has ever been expelled from another school.”

However, what if a student is expelled or suspended for “persistent disobedience” from one district and then immediately moves to become a resident of a second district? Or, an expelled or suspended student may have a parent that resides in a second district, which would make the student a resident of that district and eligible to enroll. Or, a resident student could be expelled or suspended from a charter school and then request to enroll in the public school where the student resides.

Under these circumstances, may the second school district refuse to enroll the previously suspended or expelled student? In Michigan, there is no clear-cut answer. Several other state legislatures have adopted statutes that clearly authorize school districts to deny enrollment to a suspended or expelled student. For example, Missouri school districts are specifically authorized to “make such suspension[s] or expulsion[s] from another district effective in the district in which the pupil is enrolling or attempting to enroll.”

The Michigan Legislature, on the other hand, has not *specifically* addressed this issue in the Revised School Code. Although, it could be said that the Legislature has *indirectly* granted school districts the authority to deny the enrollment of a resident student who has been

suspended or expelled from another school. Under its general powers authority, a school district may “exercise a power incidental or appropriate to the performance of any function related to the operation of the school district in the interests of public elementary and secondary education.” A decision by a school district based upon its general powers is usually upheld as long as the decision is reasonably related to the above criteria set forth for implementing general powers authority, and the decision is not prohibited by a law. Furthermore, it is worth noting that a Michigan Circuit Court, in addressing this issue, held that a student does not have a constitutional right to attend any and every district in the state, simply by establishing residence, regardless of his or her prior behaviors. This case, which was never appealed to the Michigan Court of Appeals, was also decided prior to the advent of the permanent expulsion laws.

If a school district exercises its general powers and decides to deny enrollment to a suspended or expelled resident student, the student may claim that the district’s decision is contrary to law. Such a claim would be based on a student’s right under the Revised School Code to attend school where the student resides. The student may then argue that, because the Legislature has granted school districts the authority to deny enrollment to a suspended or expelled student under specific circumstances, school districts, by implication, lack the requisite delegated authority to exclude resident students who have been suspended or expelled and wish to enroll under circumstances different than those specifically addressed by Legislature. Under this theory, the Legislature has arguably diminished the general powers authority of school districts by explicitly delegating to schools the power to deny enrollment to suspended or expelled schools of choice applicants and to resident students who have been suspended or

expelled from another school for either making a bomb threat, physically assaulting another student, or verbally assaulting a school employee, volunteer, or contractor.

Another option beyond just accepting or rejecting an expelled student's request for admission would be to conduct a due process hearing and consider whether the student should be enrolled. This would give the district an argument that it followed procedural due process and in effect expelled the student from the district based on its own code of student conduct. Nevertheless, until further clarification is made by the Legislature or the courts, school officials are advised to consult the school district's legal counsel for further guidance on this issue.

IV. Hearing Procedures

No student can be suspended or expelled until the student has had an opportunity for a hearing according to due process. Failure to follow hearing procedural requirements will result in a violation of the student's constitutional rights.

Unlike many other states, Michigan does not specify suspension or expulsion hearing procedures in state statutes. Thus, school officials must rely on court cases for guidance on procedural issues in relation to due process hearings.

Suspensions of 10 Days or less

In *Goss v Lopez*, the United States Supreme Court decided that for an out-of-school suspension of less than 10 days, sufficient due process is afforded if the hearing is conducted spontaneously and

informally. It outlined the following rudimentary due process requirements:

- Oral or written notice of the charges (*i.e.*, advising the student of the reasons for the proposed suspension);
- An explanation of the evidence supporting the charges against the student; and
- An opportunity to explain, deny, or admit the charges or evidence.

The Court also noted that in situations where a student's presence on premises poses a continuing threat or danger, the student may be immediately removed from school, with the notice and hearing following whenever practicable.

Suspensions of More than 10 Days and Expulsions

Although the Supreme Court in *Goss v Lopez* recognized that only rudimentary procedures will be required for short suspensions, it noted that longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures. However, the Supreme Court has not currently addressed this situation, and case law varies among different federal courts.

For example, in *Carey v Maine School Administration District No. 17*, 174 F Supp 906 (D Me 1990), a federal district court determined that due process would be satisfied for a 10 day suspension if a school met the following procedural requirements:

- The student must be advised of the charges against him or her;

- The student must be informed of the nature of the evidence against him or her;
- The student must be given an opportunity to be heard in his own defense;
- The student must not be punished except on the basis of substantial evidence;
- The student must be permitted the assistance of a lawyer in major disciplinary hearings;
- The student must be permitted to confront and to cross-examine the witnesses against him or her; and
- The student has the right to an impartial tribunal.

Additionally, an expulsion hearing generally requires a timely notice to the student and the student's parents or guardian. The notice should contain the time, date, and location of the hearing and should permit enough time between the notice and hearing to allow the student to prepare a defense.

Impartial Tribunal or Decision-Maker

Due process requires that the tribunal or hearer of a student disciplinary case be impartial. For example, this requirement would likely necessitate a member of the tribunal or hearer to be disqualified if he or she plans to testify in the proceedings, has participated in bringing or investigating the charges, or was the object of the misconduct giving rise to the charges.

Generally, a board of education's policies will allow a case to be heard by the board, a disciplinary panel, an administrator, legal counsel, or other school employee.

Cross-Examining Witnesses

There may be situations when student witnesses can remain anonymous to the student charged if there is a substantial likelihood of reprisal or harm to the student witnesses. The issue was discussed in a 1988 Sixth Circuit U.S. Court of Appeals decision, which is binding precedent in Michigan. In *Newsome v Batavia Local School District*, 842 F2d 920 (CA 6 1988), the Court of Appeals concluded that “the necessity of protecting student witnesses from ostracism and reprisal outweighs the value to the truth-determining process of allowing the accused to cross-examine his or her accusers.” Additionally, the court refused to establish a rule that the requirement of cross-examination of student accusers must turn on the conditions of the school. Instead of requiring the federal courts to make this determination, the court concluded that the wiser course is to leave the decision to the individual school administrations.

Right to Legal Counsel

There is also no generally applicable answer to whether students have a due process right to be represented by counsel at a hearing. While clearly there is no right to representation in connection with short term suspensions, the authorities are divided as to whether a student is entitled to employ counsel for his or her representation in disciplinary proceedings for suspensions over 10 days or expulsions.

A federal court in Missouri decided that a suspension hearing for a student charged with sexual harassment had met the minimum requirements for due process, even though the accused student had not been allowed to have a lawyer actively participate on his behalf during the hearing. Similarly, an Indiana appeals court concluded

that allowing students to bring lawyers to discipline hearings would force schools to do the same, and the “fiscal burden on the school administration outweighs the benefit of allowing counsel at the expulsion hearings.”

Other courts, however, have held that the right to representation does exist as a matter of due process. Most recently, the North Carolina Court of Appeals construed the Due Process Clause to require a student involved in a factual hearing to have the opportunity to have counsel present. This case is now pending before the North Carolina Supreme Court. A decision in the student’s favor would mark the first ruling by a state’s highest court that due process affords students the option of being represented by a lawyer at discipline hearings.

A Michigan federal district court adopted a “middle of the road” approach, concluding that students have the right to use counsel to the same extent that the school uses counsel during the proceeding. In *Jaska v Regents of University of Michigan*, 597 F Supp 1245 (ED Mich, 1984) *aff’d* 787 F2d 590 (CA 6, 1986), a federal judge determined that a university student did not have a constitutional right to be represented at his disciplinary hearing. In reaching this conclusion, the court stated the following:

The proceedings against plaintiff in this case were not unduly complex The Manual of Procedures for the Academic Judiciary is written in plain English, and is comprehensible to the average college student. *Significantly, the University of Michigan did not proceed against the plaintiff through an attorney or other representative. Had an attorney presented the*

University's case, or had the hearing been subject to complex rules of evidence or procedure, plaintiff may have had a constitutional right to representation. But here, Prof. Rothman presented the case against plaintiff, and there was nothing mysterious about the Academic Judiciary proceedings. Plaintiff was able to present his case effectively to the Academic Judiciary, and suffered no disadvantage due to the lack of representation at the hearing.

Jaska at 1252 (emphasis added).

Conclusion

Due to the differences between courts on some of the procedural requirements for disciplinary hearings, school officials would be wise to err on the side of providing students an opportunity for full protection of due process. In summary, such protection would include, but would not be limited to the following:

- Notice of charges, including a summary of the evidence that will be presented against the student;
- Prior notice of hearing, including a description of the procedures to be followed at the hearing;
- Right to legal counsel at all appropriate stages;
- Hearing before an impartial party;
- Right to confront and cross-examine adverse witnesses (limited by *Newsome* exception as explained on page 21);
- Right to view and inspect adverse evidence prior to hearing;
- Right of the student to testify on his or her own behalf; and
- Right to have a record of the findings and recommendation of the person or group conducting the hearing.

In conclusion, when considering issues relating to a disciplinary hearing, school officials should always consider the reasoning of the Supreme Court in reaching its decision in *Goss v Lopez*: “The risk of error is not at all trivial, and it should be guarded against if that may be done without prohibitive cost or interference with the educational process.”

V. Disciplining Students with Disabilities

Special Education students may be disciplined like regular education students as long as the Individualized Education Plan (IEP) determines that their disability is not related to the misconduct and as long as the district continues to provide a free and appropriate public education (FAPE) under circumstances when a *change in educational placement* has occurred. Long term suspension or expulsion is considered a change in educational placement and is allowed only after procedures specified by the Individuals with Disabilities Education Act (IDEA) are followed.

Short Term Removals

School personnel may, for disciplinary reasons, order the removal of a child with a disability from the child’s current educational placement for not more than 10 school days. Unlike an expulsion or long-term suspension, a student’s removal for 10 school days or less does not constitute a change in placement under the IDEA.

However, a series of short term removals from a student’s current educational placement which accumulate to more than 10 school days in the school year may constitute a change in placement. Factors to consider in determining whether the series of removals

constitute a change in placement include the length of each removal, the proximity of the removals to each other and the total amount of time the child is removed. These factors must be applied on a case-by-case basis and are subject to review through due process and judicial proceedings.

Changes in Placement

Before a disabled student can be suspended for 10 or more days, the team that developed the IEP must meet and review the relationship between the disability and the behavior subject to the disciplinary action. In other words, the IEP team must determine if the disability caused the student to act out. This is referred to as a manifestation determination.¹ Also at this time, the IEP team must develop an assessment plan to address the student's behavior if the school has not already conducted a functional behavioral assessment and implemented a behavioral intervention. If the IEP already contains such a plan, the IEP team reviews the plan and its implementation and modifies it as necessary to address the behavior.

If the IEP team determines that the misbehavior was a manifestation of the disability, no punishment may be assessed. If, during the review, the IEP team identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

¹ An IEP team assessing behavior manifestation should consider:

- Whether the IEP and placement were appropriate and whether the special education services, supplementary aids and service, and behavior intervention strategies were provided consistent with the IEP and placement.
- Whether the disability impaired the child's ability to understand the impact and consequences of the behavior.
- Whether the disability impaired the child's ability to control the behavior.

If the IEP team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student, except the student retains a right to continuing education services or FAPE, which must include general curriculum and IEP services, including related services and implementation of a behavior intervention plan. The school must also ensure that special education and disciplinary records are transmitted to the school district person making the final determination regarding the disciplinary action.

If there is disagreement as to whether or not the behavior is a manifestation of the disability, IDEA procedural requirements and safeguards must be followed until some resolution is reached (e.g., due process hearing). In particular, the student must stay in his or her current educational placement pending the outcome of the proceedings.

45 Day Interim Placement

School personnel can place a student with a disability in an alternative educational setting for up to 45 calendar days if the student carries a weapon to school or to a school function, or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. Under such a situation, the IEP team may extend an administrator's initial 10 day removal of the student from the educational environment to an appropriate alternative educational setting for not more than 45 calendar days. When the IEP team meets, it must develop a plan to conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, or if the student had a behavioral intervention plan, the IEP team must review the plan and

modify it, if necessary. A manifestation determination must also be conducted, although the student can remain in the 45-day interim alternative educational setting whether or not the behavior is determined to be related to the disability. If the behavior is found unrelated to the student's disability, the district's discipline code may be applied to the student, but the student retains the right under IDEA to a continuation of educational services (FAPE) during the time of the long term suspension or expulsion.

The 45 day placement must enable the student to participate in the general curriculum, although in another setting; and it must enable the student to continue to receive the services and modifications that will enable the student to meet the goals set out in his or her IEP, including the services described in the student's current IEP. At the end of the 45 day period, the student must be returned to the original placement, unless the district can get a hearing officer or judge to grant an additional 45 day interim placement under the provisions for violent or dangerous students, as discussed below.

IDEA also provides a process for a district to seek an injunction from a due process hearing officer to authorize placing a special education student in an interim alternative educational placement, up to 45 calendar days, where a district has demonstrated by substantial evidence at the hearing that the current placement of the student is substantially likely to result in injury to the child or to others. This provision sounds reasonable and may appear as a realistic option for removing a violent special education student, but IDEA requires that the district jump through several evidentiary hoops. Thus, consultation with local counsel on these requirements and whether the district can make a sufficient case is necessary.

In addition to the relief IDEA provides to schools dealing with dangerous students, schools can also ask a court to intervene and issue a “Honig Injunction” to allow a dangerous student’s placement to be changed during the pendency of a due process hearing. This procedure was noted by the Supreme Court as an alternative for school districts involved in due process hearings where the school believes that maintaining the child in his or her stay put placement jeopardizes the safety of the child or others.

Appendix A School Code Citations

380.11a General powers school district.

Sec. 3

(b) Providing for the safety and welfare of pupils while at school or a school sponsored activity or while en route to or from school or a school sponsored activity.

380.1301 Pregnant persons; expulsion or exclusion from public school prohibited; withdrawal; alternative educational program or program of special services; rules.

Sec. 1301.

(1) A person who has not completed high school may not be expelled or excluded from a public school because of being pregnant.

(2) A pregnant person who is under the compulsory school age may withdraw from a regular public school program in accordance with rules promulgated by the state board.

(3) The board of a local or intermediate school district may provide an accredited alternative educational program for school age expectant parents and school age parents and their children, or provide a program of special services within the conventional school setting, or contract with another school district offering the educational program.

(4) The state board shall promulgate rules to implement this section.

History: 1976, Act 451, Imd. Eff. Jan. 13, 1977 ;--Am. 1980, Act 109, Imd. Eff. May 10, 1980 .

Popular Name: Act 451

Admin Rule: R 340.1121 et seq. of the Michigan Administrative Code.

380.1309 Conduct constituting suspension; action by teacher; report; supervision; conference; return by student; adoption of local policy by school board; definitions.

Sec. 1309.

(1) If a teacher in a public school has good reason to believe that a pupil's conduct in a class, subject, or activity constitutes conduct for which the pupil may be suspended from a class, subject, or activity according to the local policy required under subsection (2), the teacher may cause the pupil to be suspended from the class, subject, or activity for up to 1 full school day. The teacher shall immediately report the suspension and the reason for the suspension to the school principal and send the pupil to the school principal or the school principal's designee for appropriate action. If that action requires the continued presence of the pupil at school, the pupil shall be under appropriate supervision. As soon as possible after a suspension under this section, the teacher shall ask the parent or guardian of the pupil to attend a parent-teacher conference regarding

the suspension. Whenever practicable, a school counselor, school psychologist, or school social worker shall attend the conference. A school administrator shall attend the conference if the teacher or the parent or guardian so requests. During a suspension under this section, the pupil shall not be returned that school day to the class, subject, or activity from which he or she was suspended without the concurrence of the teacher of the class, subject, or activity and the school principal.

(2) A school board shall adopt a local policy specifying the types of conduct for which a pupil may be suspended from a class, subject, or activity by a teacher under this section. This policy shall be included in the school board's code of student conduct.

(3) As used in this section:

(a) "School board" means that term as defined in section 1311a.

(b) "School principal" means the chief administrator of a school.

History: Add. 1999, Act 103, Imd. Eff. July 6, 1999 .

Popular Name: Act 451

380.1310 Physical assault at school against another pupil; expulsion required; alternative education; definitions.

Sec. 1310.

(1) If a pupil enrolled in grade 6 or above commits a physical assault at school against another pupil and the physical assault is reported to

the school board, school district superintendent, or building principal, then the school board or the designee of the school board as described in section 1311(1) on behalf of the school board shall suspend or expel the pupil from the school district for up to 180 school days. A district superintendent or building principal who receives a report described in this subsection shall forward the report to the school board. Notwithstanding section 1147, a school district is not required to allow an individual expelled from another school district under this section to attend school in the school district during the expulsion.

(2) If an individual is expelled pursuant to this section, it is the responsibility of that individual and of his or her parent or legal guardian to locate a suitable educational program and to enroll the individual in such a program during the expulsion. The office for safe schools in the department shall compile information on and catalog existing alternative education programs or schools and nonpublic schools that may be open to enrollment of individuals expelled under this section and pursuant to section 1311(2) or 1311a, and shall periodically distribute this information to school districts for distribution to expelled individuals. A school board that establishes an alternative education program or school described in this subsection shall notify the office for safe schools about the program or school and the types of pupils it serves. The office for safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served.

(3) As used in this section:

(a) "At school" means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises.

(b) "Physical assault" means intentionally causing or attempting to cause physical harm to another through force or violence.

(c) "School board" means a school board, intermediate school board, or the board of directors of a public school academy.

(d) "School district" means a school district, a local act school district, an intermediate school district, or a public school academy.

History: Add. 1999, Act 102, Imd. Eff. July 6, 1999 ;--Am. 2000, Act 230, Imd. Eff. June 27, 2000 .

380.1311 Suspension or expulsion of pupils.

Sec. 1311.

(1) Subject to subsection (2), the school board, or the school district superintendent, a school building principal, or another school district official if designated by the school board, may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience if, in the judgment of the school board or its designee, as applicable, the interest of the school is served by the authorization or order. If there is reasonable cause to believe that the pupil is handicapped, and the school district has not evaluated the pupil in accordance with rules of the state board to

determine if the student is handicapped, the pupil shall be evaluated immediately by the intermediate school district of which the school district is constituent in accordance with section 1711.

(2) If a pupil possesses in a weapon free school zone a weapon that constitutes a dangerous weapon, commits arson in a school building or on school grounds, or commits criminal sexual conduct in a school building or on school grounds, the school board, or the designee of the school board as described in subsection (1) on behalf of the school board, shall expel the pupil from the school district permanently, subject to possible reinstatement under subsection (5). However, a school board is not required to expel a pupil for possessing a weapon if the pupil establishes in a clear and convincing manner at least 1 of the following:

(a) The object or instrument possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.

(b) The weapon was not knowingly possessed by the pupil.

(c) The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a dangerous weapon.

(d) The weapon was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

(3) If an individual is expelled pursuant to subsection (2), the expelling school district shall enter on the individual's permanent record that he or she has been expelled pursuant to subsection (2).

Except if a school district operates or participates cooperatively in an alternative education program appropriate for individuals expelled pursuant to subsection (2) and in its discretion admits the individual to that program, and except for a strict discipline academy established under sections 1311b to 1311l, an individual expelled pursuant to subsection (2) is expelled from all public schools in this state and the officials of a school district shall not allow the individual to enroll in the school district unless the individual has been reinstated under subsection (5). Except as otherwise provided by law, a program operated for individuals expelled pursuant to subsection (2) shall ensure that those individuals are physically separated at all times during the school day from the general pupil population. If an individual expelled from a school district pursuant to subsection (2) is not placed in an alternative education program or strict discipline academy, the school district may provide, or may arrange for the intermediate school district to provide, appropriate instructional services to the individual at home. The type of services provided shall meet the requirements of section 6(4)(v) of the state school aid act of 1979, MCL 388.1606, and the services may be contracted for in the same manner as services for homebound pupils under section 109 of the state school aid act of 1979, MCL 388.1709. This subsection does not require a school district to expend more money for providing services for a pupil expelled pursuant to subsection (2) than the amount of the foundation allowance the school district receives for the pupil under section 20 of the state school aid act of 1979, MCL 388.1620.

(4) If a school board expels an individual pursuant to subsection (2), the school board shall ensure that, within 3 days after the expulsion, an official of the school district refers the individual to the appropriate county department of social services or county community mental

health agency and notifies the individual's parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, notifies the individual of the referral.

(5) The parent or legal guardian of an individual expelled pursuant to subsection (2) or, if the individual is at least age 18 or is an emancipated minor, the individual may petition the expelling school board for reinstatement of the individual to public education in the school district. If the expelling school board denies a petition for reinstatement, the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may petition another school board for reinstatement of the individual in that other school district. All of the following apply to reinstatement under this subsection:

(a) For an individual who was enrolled in grade 5 or below at the time of the expulsion and who has been expelled for possessing a firearm or threatening another person with a dangerous weapon, the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may initiate a petition for reinstatement at any time after the expiration of 60 school days after the date of expulsion. For an individual who was enrolled in grade 5 or below at the time of the expulsion and who has been expelled pursuant to subsection (2) for a reason other than possessing a firearm or threatening another person with a dangerous weapon, the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may initiate a petition for reinstatement at any time. For an individual who was in grade 6 or above at the time of expulsion, the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual

may initiate a petition for reinstatement at any time after the expiration of 150 school days after the date of expulsion.

(b) An individual who was in grade 5 or below at the time of the expulsion and who has been expelled for possessing a firearm or threatening another person with a dangerous weapon shall not be reinstated before the expiration of 90 school days after the date of expulsion. An individual who was in grade 5 or below at the time of the expulsion and who has been expelled pursuant to subsection (2) for a reason other than possessing a firearm or threatening another person with a dangerous weapon shall not be reinstated before the expiration of 10 school days after the date of the expulsion. An individual who was in grade 6 or above at the time of the expulsion shall not be reinstated before the expiration of 180 school days after the date of expulsion.

(c) It is the responsibility of the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, of the individual to prepare and submit the petition. A school board is not required to provide any assistance in preparing the petition. Upon request by a parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, by the individual, a school board shall make available a form for a petition.

(d) Not later than 10 school days after receiving a petition for reinstatement under this subsection, a school board shall appoint a committee to review the petition and any supporting information submitted by the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, by the individual. The committee shall consist of 2 school board members, 1 school administrator, 1 teacher, and 1 parent of a pupil in the school district.

During this time the superintendent of the school district may prepare and submit for consideration by the committee information concerning the circumstances of the expulsion and any factors mitigating for or against reinstatement.

(e) Not later than 10 school days after all members are appointed, the committee described in subdivision (d) shall review the petition and any supporting information and information provided by the school district and shall submit a recommendation to the school board on the issue of reinstatement. The recommendation shall be for unconditional reinstatement, for conditional reinstatement, or against reinstatement, and shall be accompanied by an explanation of the reasons for the recommendation and of any recommended conditions for reinstatement. The recommendation shall be based on consideration of all of the following factors:

(i) The extent to which reinstatement of the individual would create a risk of harm to pupils or school personnel.

(ii) The extent to which reinstatement of the individual would create a risk of school district liability or individual liability for the school board or school district personnel.

(iii) The age and maturity of the individual.

(iv) The individual's school record before the incident that caused the expulsion.

(v) The individual's attitude concerning the incident that caused the expulsion.

(vi) The individual's behavior since the expulsion and the prospects for remediation of the individual.

(vii) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by the parent or legal guardian and that can be expected if the individual is reinstated, including, but not limited to, receptiveness toward possible conditions placed on the reinstatement.

(f) Not later than the next regularly scheduled board meeting after receiving the recommendation of the committee under subdivision (e), a school board shall make a decision to unconditionally reinstate the individual, conditionally reinstate the individual, or deny reinstatement of the individual. The decision of the school board is final.

(g) A school board may require an individual and, if the petition was filed by a parent or legal guardian, his or her parent or legal guardian to agree in writing to specific conditions before reinstating the individual in a conditional reinstatement. The conditions may include, but are not limited to, agreement to a behavior contract, which may involve the individual, parent or legal guardian, and an outside agency; participation in or completion of an anger management program or other appropriate counseling; periodic progress reviews; and specified immediate consequences for failure to abide by a condition. A parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may include proposed conditions in a petition for reinstatement submitted under this subsection.

(6) A school board or school administrator that complies with subsection (2) is not liable for damages for expelling a pupil pursuant to subsection (2), and the authorizing body of a public school academy is not liable for damages for expulsion of a pupil by the public school academy pursuant to subsection (2).

(7) The department shall develop and distribute to all school districts a form for a petition for reinstatement to be used under subsection (5).

(8) This section does not diminish the due process rights under federal law of a pupil who has been determined to be eligible for special education programs and services.

(9) If a pupil expelled from a public school district pursuant to subsection (2) is enrolled by a public school district sponsored alternative education program or a public school academy during the period of expulsion, the public school academy or alternative education program shall immediately become eligible for the prorated share of either the public school academy or operating school district's foundation allowance or the expelling school district's foundation allowance, whichever is higher.

(10) If an individual is expelled pursuant to subsection (2), it is the responsibility of that individual and of his or her parent or legal guardian to locate a suitable alternative educational program and to enroll the individual in such a program during the expulsion. The office of safe schools in the department shall compile information on and catalog existing alternative education programs or schools and nonpublic schools that may be open to enrollment of individuals expelled pursuant to subsection (2) and pursuant to section 1311a,

and shall periodically distribute this information to school districts for distribution to expelled individuals. A school board that establishes an alternative education program or school described in this subsection shall notify the office of safe schools about the program or school and the types of pupils it serves. The office of safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served.

(11) As used in this section:

(a) “Arson” means a felony violation of chapter X of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80.

(b) “Criminal sexual conduct” means a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

(c) “Dangerous weapon” means that term as defined in section 1313.

(d) “Firearm” means that term as defined in section 921 of title 18 of the United States Code, 18 U.S.C. 921.

(e) “School board” means a school board, intermediate school board, or the board of directors of a public school academy.

(f) “School district” means a school district, a local act school district, an intermediate school district, or a public school academy.

(g) "Weapon free school zone" means that term as defined in section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.

History: 1976, Act 451, Imd. Eff. Jan. 13, 1977 ;--Am. 1993, Act 335, Imd. Eff. Dec. 31, 1993 ;--Am. 1994, Act 328, Eff. Jan. 1, 1995 ;--Am. 1995, Act 250, Imd. Eff. Jan. 2, 1996 ;--Am. 1999, Act 23, Imd. Eff. May 12, 1999 .

Popular Name: Act 451

380.1311a Assault by pupil against employee, volunteer, or contractor; expulsion required; alternative services; referral; reinstatement; immunity from liability; petition for reinstatement form; rights of pupils eligible for special education programs and services; eligibility of school for prorated share of foundation allowance; report of assaults; responsibility for enrollment in educational program; definitions.

Sec. 1311a.

(1) If a pupil enrolled in grade 6 or above commits a physical assault at school against a person employed by or engaged as a volunteer or contractor by the school board and the physical assault is reported to the school board, school district superintendent, or building principal by the victim or, if the victim is unable to report the assault, by another person on the victim's behalf, then the school board, or the designee of the school board as described in section 1311(1) on behalf of the school board, shall expel the pupil from the school district permanently, subject to possible reinstatement under subsection (5). A district superintendent or building principal who

receives a report described in this subsection shall forward the report to the school board.

(2) If a pupil enrolled in grade 6 or above commits a verbal assault, as defined by school board policy, at school against a person employed by or engaged as a volunteer or contractor by the school board and the verbal assault is reported to the school board, school district superintendent, or building principal by the victim or, if the victim is unable to report the verbal assault, by another person on the victim's behalf, or if a pupil enrolled in grade 6 or above makes a bomb threat or similar threat directed at a school building, other school property, or a school-related event, then the school board, or the designee of the school board as described in section 1311(1) on behalf of the school board, shall suspend or expel the pupil from the school district for a period of time as determined in the discretion of the school board or its designee. A district superintendent or building principal who receives a report described in this subsection shall forward the report to the school board. Notwithstanding section 1147, a school district is not required to allow an individual expelled from another school district under this subsection to attend school in the school district during the expulsion.

(3) If an individual is permanently expelled pursuant to this section, the expelling school district shall enter on the individual's permanent record that he or she has been permanently expelled pursuant to this section. Except if a school district operates or participates cooperatively in an alternative education program appropriate for individuals expelled pursuant to this section and section 1311(2) and in its discretion admits the individual to that program, and except for a strict discipline academy established under sections 1311b to 1311l, an individual permanently expelled pursuant to this section is

expelled from all public schools in this state and the officials of a school district shall not allow the individual to enroll in the school district unless the individual has been reinstated under subsection (5). Except as otherwise provided by law, a program operated for individuals expelled pursuant to this section and section 1311(2) shall ensure that those individuals are physically separated at all times during the school day from the general pupil population. If an individual permanently expelled from a school district pursuant to this section is not placed in an alternative education program or strict discipline academy, the school district may provide, or may arrange for the intermediate school district to provide, appropriate instructional services to the individual at home. The type of services provided shall meet the requirements of section 6(4)(v) of the state school aid act of 1979, MCL 388.1606, and the services may be contracted for in the same manner as services for homebound pupils under section 109 of the state school aid act of 1979, MCL 388.1709. This subsection does not require a school district to expend more money for providing services for a pupil permanently expelled pursuant to this section than the amount of the foundation allowance the school district receives for the pupil under section 20 of the state school aid act of 1979, MCL 388.1620.

(4) If a school board permanently expels an individual pursuant to this section, the school board shall ensure that, within 3 days after the expulsion, an official of the school district refers the individual to the appropriate county department of social services or county community mental health agency and notifies the individual's parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, notifies the individual of the referral.

(5) The parent or legal guardian of an individual permanently expelled pursuant to this section or, if the individual is at least age 18 or is an emancipated minor, the individual may petition the expelling school board for reinstatement of the individual to public education in the school district. If the expelling school board denies a petition for reinstatement, the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may petition another school board for reinstatement of the individual in that other school district. All of the following apply to reinstatement under this subsection:

(a) The individual's parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may initiate a petition for reinstatement at any time after the expiration of 150 school days after the date of expulsion.

(b) The individual shall not be reinstated before the expiration of 180 school days after the date of expulsion.

(c) It is the responsibility of the parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, of the individual to prepare and submit the petition. A school board is not required to provide any assistance in preparing the petition. Upon request by a parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, by the individual, a school board shall make available a form for a petition.

(d) Not later than 10 school days after receiving a petition for reinstatement under this subsection, a school board shall appoint a committee to review the petition and any supporting information submitted by the parent or legal guardian or, if the individual is at

least age 18 or is an emancipated minor, by the individual. The committee shall consist of 2 school board members, 1 school administrator, 1 teacher, and 1 parent of a pupil in the school district. During this time the superintendent of the school district may prepare and submit for consideration by the committee information concerning the circumstances of the expulsion and any factors mitigating for or against reinstatement.

(e) Not later than 10 school days after all members are appointed, the committee described in subdivision (d) shall review the petition and any supporting information and information provided by the school district and shall submit a recommendation to the school board on the issue of reinstatement. The recommendation shall be for unconditional reinstatement, for conditional reinstatement, or against reinstatement, and shall be accompanied by an explanation of the reasons for the recommendation and of any recommended conditions for reinstatement. The recommendation shall be based on consideration of all of the following factors:

(i) The extent to which reinstatement of the individual would create a risk of harm to pupils or school personnel.

(ii) The extent to which reinstatement of the individual would create a risk of school district or individual liability for the school board or school district personnel.

(iii) The age and maturity of the individual.

(iv) The individual's school record before the incident that caused the expulsion.

(v) The individual's attitude concerning the incident that caused the expulsion.

(vi) The individual's behavior since the expulsion and the prospects for remediation of the individual.

(vii) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by the parent or legal guardian and that can be expected if the individual is reinstated, including, but not limited to, receptiveness toward possible conditions placed on the reinstatement.

(f) Not later than the next regularly scheduled board meeting after receiving the recommendation of the committee under subdivision (e), a school board shall make a decision to unconditionally reinstate the individual, conditionally reinstate the individual, or deny reinstatement of the individual. The decision of the school board is final.

(g) A school board may require an individual and, if the petition was filed by a parent or legal guardian, his or her parent or legal guardian to agree in writing to specific conditions before reinstating the individual in a conditional reinstatement. The conditions may include, but are not limited to, agreement to a behavior contract, which may involve the individual, parent or legal guardian, and an outside agency; participation in or completion of an anger management program or other appropriate counseling; periodic progress reviews; and specified immediate consequences for failure to abide by a condition. A parent or legal guardian or, if the individual is at least age 18 or is an emancipated minor, the individual may include proposed

conditions in a petition for reinstatement submitted under this subsection.

(6) A school board or school administrator that complies with this section is not liable for damages for suspending or expelling a pupil pursuant to this section, and the authorizing body of a public school academy is not liable for damages for suspension or expulsion of a pupil by the public school academy pursuant to this section.

(7) The department shall develop and distribute to all school districts a form for a petition for reinstatement to be used under subsection (5). The department may designate the form used for a petition for reinstatement under section 1311 as a form that may be used under this section.

(8) This section does not diminish the due process rights under federal law of a pupil who has been determined to be eligible for special education programs and services.

(9) If a pupil expelled from a school district pursuant to this section is enrolled by a public school district sponsored alternative education program or a public school academy during the period of expulsion, the public school academy or the alternative education program is immediately eligible for the prorated share of either the public school academy's or operating school district's foundation allowance or the expelling school district's foundation allowance, whichever is higher.

(10) A school board or its designee shall report all assaults described in subsection (1) or (2) to appropriate state or local law enforcement officials and prosecutors as provided in the statewide school safety information policy under section 1308.

(11) If an individual is expelled pursuant to this section, it is the responsibility of that individual and of his or her parent or legal guardian to locate a suitable educational program and to enroll the individual in such a program during the expulsion. The office for safe schools in the department shall compile information on and catalog existing alternative education programs or schools and nonpublic schools that may be open to enrollment of individuals expelled pursuant to this section and pursuant to section 1311(2), and shall periodically distribute this information to school districts for distribution to expelled individuals. A school board that establishes an alternative education program or school described in this subsection shall notify the office of safe schools about the program or school and the types of pupils it serves. The office for safe schools also shall work with and provide technical assistance to school districts, authorizing bodies for public school academies, and other interested parties in developing these types of alternative education programs or schools in geographic areas that are not being served.

(12) As used in this section:

(a) "At school" means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises.

(b) "Physical assault" means intentionally causing or attempting to cause physical harm to another through force or violence.

(c) "School board" means a school board, intermediate school board, or the board of directors of a public school academy.

(d) "School district" means a school district, a local act school district, an intermediate school district, or a public school academy.

History: Add. 1999, Act 104, Imd. Eff. July 6, 1999 ;--Am. 2000, Act 230, Imd. Eff. June 27, 2000 .

380.1311b Strict discipline academy; powers; definitions.

Sec. 1311b.

(1) A strict discipline academy is a public school under section 2 of article VIII of the state constitution of 1963, is a school district for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 1225, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A strict discipline academy is a body corporate and is a governmental agency. The powers granted to a strict discipline academy under sections 1311b to 1311l constitute the performance of essential public purposes and governmental functions of this state.

(2) As used in sections 1311b to 1311l:

(a) "Authorizing body" means any of the following that issues a contract as provided in sections 1311b to 1311 l:

(i) The board of a school district that operates grades K to 12.

(ii) An intermediate school board.

(iii) The board of a community college.

(iv) The governing board of a state public university.

(b) “Certificated teacher” means an individual who holds a valid teaching certificate issued by the state board under section 1531.

(c) “Community college” means a community college organized under the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195, or a federal tribally controlled community college that is recognized under the tribally controlled community college assistance act of 1978, Public Law 95-471, and is determined by the department to meet the requirements for accreditation by a recognized regional accrediting body.

(d) “Contract” means the executive act taken by an authorizing body that evidences the authorization of a strict discipline academy and that establishes, subject to the constitutional powers of the state board and applicable law, the written instrument executed by an authorizing body conferring certain rights, franchises, privileges, and obligations on a strict discipline academy, as provided by sections 1311b to 1311l, and confirming the status of a strict discipline academy as a public school in this state.

(e) “Entity” means a partnership, nonprofit or business corporation, labor organization, or any other association, corporation, trust, or other legal entity.

(f) “State public university” means a university described in section 4, 5, or 6 of article VIII of the state constitution of 1963.

History: Add. 1999, Act 23, Imd. Eff. May 12, 1999 .

Popular Name: Act 451

380.1313 Dangerous weapon found in possession of pupil; report; confiscation by school official; determination of legal owner; “dangerous weapon” defined.

Sec. 1313.

(1) If a dangerous weapon is found in the possession of a pupil while the pupil is in attendance at school or a school activity or while the pupil is enroute to or from school on a school bus, the superintendent of the school district or intermediate school district, or his or her designee, immediately shall report that finding to the pupil's parent or legal guardian and the local law enforcement agency.

(2) If a school official finds that a dangerous weapon is in the possession of a pupil as described in subsection (1), the school official may confiscate the dangerous weapon or shall request a law enforcement agency to respond as soon as possible and to confiscate the dangerous weapon. If a school official confiscates a dangerous weapon under this subsection, the school official shall give the dangerous weapon to a law enforcement agency and shall not release the dangerous weapon to any other person, including the legal owner of the dangerous weapon. A school official who complies in good faith with this section is not civilly or criminally liable for that compliance.

(3) A law enforcement agency that takes possession of a dangerous weapon under subsection (2) shall check all available local and state

stolen weapon and stolen property files and the national crime information center stolen gun and property files to determine the legal owner of the dangerous weapon. If the dangerous weapon is a pistol, the law enforcement agency also shall check the state pistol registration records to determine the legal owner. If the law enforcement agency is able to determine the legal owner of the dangerous weapon, and if the legal owner did not knowingly provide the dangerous weapon to the pupil or lawfully provided the dangerous weapon to the pupil but did not know or have reason to know that the pupil would possess the dangerous weapon while in attendance at school or a school activity or while en route to or from school on a school bus, the law enforcement agency shall send by certified mail to the legal owner a notice that the agency is in possession of the dangerous weapon and that the legal owner has 90 days from receipt of the notice to claim the dangerous weapon.

(4) As used in this section, “dangerous weapon” means a firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles.

History: Add. 1987, Act 211, Imd. Eff. Dec. 22, 1987 ;--Am. 1995, Act 76, Eff. Aug. 1, 1995 .

Popular Name: Act 451

Appendix B

Definitions

Arson - “Arson” means a felony conviction of chapter X of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80.

At School – “At School” means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event whether or not it is held on school premises.

Criminal Sexual Conduct -

“Criminal sexual conduct” (CSC) means:

- First degree CSC;
- Second degree CSC;
- Third degree CSC;
- Fourth degree CSC;
- Assault with intent to commit CSC involving sexual penetration;
- or
- Assault with intent to commit second degree CSC.

Dangerous Weapon - The term “dangerous weapon” is defined as a firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by mechanical device, iron bar, or brass knuckles. The Revised School Code defines the term “firearm” by referring to the *Gun Free Schools Act 1994*.

*measured from the hilt

In defining “firearm” the federal *Gun-Free Schools Act of 1994* refers to another section of federal law, which defines “firearm” as:

- Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive;
- The frame or receiver of any such weapon;
- Any firearm muffler or firearm silencer; or
- Any destructive device.

Due Process – A course of legal proceedings in accordance with principles of law designed to protect individual rights.

Expulsion – Generally referred to as the removal or exclusion of a student from school for more than 10 days, the balance of a school term, the school year or an other period that may carry over beyond the current school year.

Physical assault – “Physical assault” means intentionally causing or attempting to cause physical harm to another through force or violence.

Snap Suspension – The removal of a student by a teacher from a classroom, subject, or activity for up to one day.

Suspension – Not defined in the school code. Generally referred to as the removal of a student from school (activity, etc.) for a period of less than 10 days.

Weapon Free School Zone - “Weapon Free School Zone” means school property and a vehicle used by a school to transport students to or from school property.

“School Property” means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses.

Appendix C - Discipline Action Form
(Notice of Suspension)

Student's Name _____			
<i>Last Name</i>	<i>First Name</i>	<i>Middle Initial</i>	
Student's Address _____			
<i>City</i>	<i>State</i>	<i>Zip Code</i>	
Student's Age _____	Date of Birth _____	Sex _____	Student's Phone Number _____
School _____	Grade _____	Homeroom _____	

To:

Name of Parent/Guardian Date

Statement of Reasons for Suspension: The student named above has violated the following rule or standard of conduct and has demonstrated the behavior described below which constitutes cause for suspension:

Incident reported by: _____ on _____ at approximately _____ _am _pm
Incident investigated by: _____ on _____ at approximately _____ _am _pm

Student has a disability under _Section 504 _IDEA (Individuals with Disabilities Act).

School officials have determined that this offense _does _does not warrant a recommendation for expulsion.

Suspension shall be assigned as follows:

The suspension shall start on _____ _am _pm

The suspension shall end on _____ _am _pm

Note: If the day of suspension is not an actual school day (snow, ice, etc.) the day of suspension automatically extends to the next school day in session.
--

Signature of Principal/Designee

Date

Due Process

Due process was afforded as evidenced by _oral _written notice of the charges. If the student denied the charges, he or she was given the opportunity to present his or her version and these comments _are _are not on file.

Provided by MASB Policy Services. For more information about the MASB Forms Manual, call (517) 327-5931.

Appendix D - Student Discipline
(Notice of Expulsion Hearing)

Date _____

Dear Parent(s)/Guardian(s):

This is to inform you that a hearing will be held on _____(date) concerning the potential expulsion of _____(student) from the _____(school District). The hearing will be held at _____(time) in _____(location).

(Student name) _____ is accused of the following:

If good cause can be shown that the hearing should not be held on this date, another date can be scheduled by contacting in writing:

Name _____

Address _____

Unless other arrangements are made, the hearing will be held at the time and location stated above regardless of your ability to attend.

You may waive your right to this hearing by putting such a request in writing or returning the form on the next page. If the right to a hearing is not waived, the hearing will commence at the stated time and place.

At the hearing, evidence will be presented and witnesses called to support the charge made above. You and your child have the following rights:

1. To be represented by counsel
2. To hear the witnesses and evidence against you
3. To present witnesses and evidence on your own behalf and testify on your own behalf

The following witnesses may be called by the Board of Education:

_____	_____
_____	_____
_____	_____

The Board will be represented by (name of attorney) _____

You or your attorney can contact (attorney name) _____

at (attorney's phone and address _____)

Sincerely,

(title)

I waive my right to a hearing in the matter of the expulsion (student). I understand that without a written waiver the hearing will be held as scheduled.

Signature of Parent/Guardian

Date

Provided by MASB Policy Services. For more information about the MASB Forms Manual, call (517) 327-5931.

This Petition for Reinstatement was developed by the Michigan Department of Education pursuant to *The Revised School Code*, MCL 380.1311(7) and MCL 380.1311a(7). This form may be adopted or modified at the option of local school districts or petitioners.

PETITION FOR SCHOOL REINSTATEMENT

DATE: _____

TO: Board of Education of _____
[Insert Name and Address of School District]

FROM: _____, **Petitioner**
[Insert Name of Petitioner]

1. Status of Petitioner:

- Parent(s) or Legal Guardian(s) of the Expelled Individual.
- Expelled Individual (18 Years of Age or Older)
- Expelled Individual (as an Emancipated Minor). *A copy of the court order of emancipation must be attached.*

2. This Petition for Reinstatement is made on behalf of:

Name: _____ Age: _____ Telephone #: _____

Address: _____

3. Parent(s) or Legal Guardian(s) of the Expelled Individual (Include names, addresses, and telephone numbers of both parents/legal guardians, if appropriate):

Parent (s) Legal Guardian(s)

Name(s): _____ Telephone #: _____

Address: _____

Parent (s) Legal Guardian(s)

Name(s): _____ Telephone #: _____

Address: _____

4. Date of expulsion: _____ **5. Grade Level of Expelled Individual:** _____

6. Expelling School District: _____
[Insert Name of Expelling School District]

Telephone: _____

[Insert address and telephone number if the above-petitioned school district is not the expelling school district.]

7. Briefly describe the incident that caused the expulsion:

8. **Has the expelled individual received assistance from a state or county social services agency?**
 Yes No Refuse to Answer*

If yes, attach all written documentation prepared by the agency regarding assistance the individual received from the date of expulsion to the date of this Petition.
 Refuse to Provide Documentation*

9. **Has the expelled individual received assistance from a state or county community mental health agency?**
 Yes No Refuse to Answer*

If yes, attach all written documentation prepared by the agency regarding assistance the individual received from the date of expulsion to the date of this Petition.
 Refuse to Provide Documentation*

10. **Has the expelled individual received assistance from a private mental health professional from the date of expulsion to the date of this Petition?**
 Yes No Refuse to Answer*

If yes, attach a detailed report from the mental health professional setting forth any findings, including results of all tests and examinations performed, diagnosis, conclusions, and treatments provided from the date of expulsion to the date of this Petition. Refuse to Provide Documentation.*

11. **Was any criminal or juvenile court action initiated against the expelled individual as a result of the incident that caused the expulsion?** Yes No

Date	Charge	Case No.	Court, Address and Telephone #	Status of Case

12. **Was the expelled individual convicted as: an adult, or adjudicated as a juvenile offender as a result of the incident that cause the expulsion?** Yes No (If yes, attach a copy of the judgment of sentence or order of disposition, and information regarding their probation officer.)

Probation officer: Name and Title: _____

Address: _____ Telephone # _____

13. **Other than the incident that caused the expulsion, was the expelled individual charged or convicted of any criminal offense in any court in the United States since the expulsion date?**
 Yes No

Date	Charge	Court, Address and Telephone #	Status of Case

14. Describe the expelled individual's attitude concerning the incident that caused the expulsion.

15. a. Describe the expelled individual's behavior since the expulsion.

b. List aspects of the expelled individual's prior school record that the Board should take into consideration.

16. What is the likelihood the expelled individual will be successful if reinstated to public education in the school district?

17. Attach three letters of reference from persons who are not related to the expelled individual.

I understand that I am required to inform the Board of Education of the _____
_____ School District, in writing, of any change of circumstances from those recorded in
this Petition or its attachments. I understand that if I fail to keep the Board of Education informed, that failure may
be cause to revoke or deny reinstatement.

I understand that any false, incomplete or inaccurate information recorded in this Petition for Reinstatement or its
attachments may result in the denial of this Petition, or revoke the individual's reinstatement to public school.

Signed: _____
[Insert Name of Petitioner]

[Insert Name of Petitioner]

Dated: _____