

Act No. 328
Public Acts of 1994
Approved by the Governor
October 12, 1994
Filed with the Secretary of State
October 13, 1994

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994**

Introduced by Senators Gougeon Dunaskiss DiNello Steil Cisky Bouchard Dillingham and Emmons

ENROLLED SENATE BILL No. 966

AN ACT to amend section 1311 of Act No. 451 of the Public Acts of 1976 entitled as amended An act to provide a system of public instruction and elementary and secondary schools to revise consolidate and classify the laws relating to elementary and secondary education to provide for the classification organization regulation and maintenance of schools school districts and intermediate school districts to prescribe rights powers duties and privileges of schools school districts and intermediate school districts to provide for the regulation of school teachers and school administrators to provide for school elections and to prescribe powers and duties with respect thereto to provide for the levy and collection of taxes to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness to establish a fund and provide for expenditures from that fund to provide for and prescribe the powers and duties of certain state departments the state board of education and certain other boards and officials to provide for licensure of boarding schools to prescribe penalties and to repeal certain acts and parts of acts as amended by Act No. 335 of the Public Acts of 1993 being section 380 1311 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Section 1311 of Act No. 451 of the Public Acts of 1976 as amended by Act No. 335 of the Public Acts of 1993 being section 380 1311 of the Michigan Compiled Laws is amended to read as follows

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 or commits arson in the school building or on the school grounds or rapes someone in the building or on school grounds he 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) unless 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 in a program appropriate for individuals expelled pursuant to subsection (2) and in its discretion admits the individual to that program 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 be operated in facilities or at times separate from those used for the general pupil population

(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 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 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 shall not be reinstated before the expiration of 90 school days after the date of 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 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 established under part 6a is not liable for damages for expulsion of a pupil by the public school academy pursuant to subsection (2)

(7) Not later than 90 days after the effective date of the amendatory act that added this subsection the department shall develop and distribute to all school districts a form for a petition to be used under subsection (5)

(8) Subsections (2) to (7) do 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) As used in this section

(a) Dangerous weapon means that term as defined in section 1313

(b) School board means a school board intermediate school board or the board of directors of a public school academy established under part 6a

(c) School district means a school district a local act school district an intermediate school district or a public school academy established under part 6a

(d) Weapon free school zone means that term as defined in section 237a of the Michigan penal code Act No 328 of the Public Acts of 1931 being section 750 237a of the Michigan Compiled Laws

Section 2 This amendatory act shall take effect January 1 1995

This act is ordered to take immediate effect

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Secretary of the Senate

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Co Clerk of the House of Representatives

Approved

Governor