



HOUSE BILL No. 4542

March 8, 1995, Introduced by Reps. Alley, Gubow and Baade and referred to the Committee on Education.

A bill to amend section 1311 of Act No. 451 of the Public Acts of 1976, entitled as amended "The school code of 1976," as amended by Act No. 328 of the Public Acts of 1994, being section 380.1311 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1311 of Act No. 451 of the Public Acts
2 of 1976, as amended by Act No. 328 of the Public Acts of 1994,
3 being section 380.1311 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 1311. (1) Subject to subsection (2), the school board,
6 or the school district superintendent, a school building princi-
7 pal, or another school district official if designated by the
8 school board, may authorize or order the suspension or expulsion
9 from school of a pupil guilty of gross misdemeanor or persistent

1 disobedience if, in the judgment of the school board or its
2 designee, as applicable, the interest of the school is served by
3 the authorization or order. If there is reasonable cause to
4 believe that the pupil is handicapped, and the school district
5 has not evaluated the pupil in accordance with rules of the state
6 board to determine if the student is handicapped, the pupil shall
7 be evaluated immediately by the intermediate school district of
8 which the school district is constituent in accordance with sec-
9 tion 1711.

10 (2) If a pupil possesses in a weapon free school zone a
11 weapon that constitutes a dangerous weapon, or commits arson in
12 the school building or on the school grounds, or rapes someone in
13 the building or on school grounds, the school board, or the des-
14 ignee of the school board as described in subsection (1) on
15 behalf of the school board, shall expel the pupil from the school
16 district permanently ~~, subject to possible reinstatement under~~
17 ~~subsection (5),~~ unless the pupil establishes in a clear and con-
18 vincing manner at least 1 of the following:

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

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

23 (c) The pupil did not know or have reason to know that the
24 object or instrument possessed by the pupil constituted a danger-
25 ous weapon.

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

4 (3) If an individual is expelled pursuant to subsection (2),
5 the expelling school district shall enter on the individual's
6 permanent record that he or she has been expelled pursuant to
7 subsection (2). ~~Except if a school district operates or partic-~~
8 ~~ipates in a program appropriate for individuals expelled pursuant~~
9 ~~to subsection (2) and in its discretion admits the individual to~~
10 ~~that program, an~~ AN individual expelled pursuant to
11 subsection (2) is expelled from all public schools in this state
12 and the officials of a school district shall not allow the indi-
13 vidual to enroll in the school district unless the individual has
14 been reinstated under subsection (5). Except as otherwise pro-
15 vided by law, a program operated for individuals expelled pursu-
16 ant to subsection (2) shall be operated in facilities or at times
17 separate from those used for the general pupil population.

18 (4) If a school board expels an individual pursuant to sub-
19 section (2), the school board shall ensure that, within 3 days
20 after the expulsion, an official of the school district refers
21 the individual to the appropriate county department of social
22 services or county community mental health agency and notifies
23 the individual's parent or legal guardian or, if the individual
24 is at least age 18 or is an emancipated minor, notifies the indi-
25 vidual of the referral.

26 (5) The parent or legal guardian of an individual expelled
27 pursuant to subsection (2) or, if the individual is at least age

1 18 or is an emancipated minor, the individual may petition A
2 SCHOOL BOARD OTHER THAN the expelling school board ~~for rein-~~
3 ~~statement of the individual to public education in the school~~
4 ~~district. If the expelling school board denies a petition for~~
5 ~~reinstatement, the parent or legal guardian or, if the individual~~
6 ~~is at least age 18 or is an emancipated minor, the individual may~~
7 ~~petition another school board~~ for reinstatement of the individ-
8 ual in that other school district. All of the following apply to
9 reinstatement under this subsection:

10 (a) For an individual who was enrolled in grade 5 or below
11 at the time of the expulsion, the parent or legal guardian or, if
12 the individual is at least age 18 or is an emancipated minor, the
13 individual may initiate a petition for reinstatement at any time
14 after the expiration of 60 school days after the date of
15 expulsion. For an individual who was in grade 6 or above at the
16 time of expulsion, the parent or legal guardian or, if the indi-
17 vidual is at least age 18 or is an emancipated minor, the indi-
18 vidual may initiate a petition for reinstatement at any time
19 after the expiration of 150 school days after the date of
20 expulsion.

21 (b) An individual who was in grade 5 or below at the time of
22 the expulsion shall not be reinstated before the expiration of 90
23 school days after the date of expulsion. An individual who was
24 in grade 6 or above at the time of the expulsion shall not be
25 reinstated before the expiration of 180 school days after the
26 date of expulsion.

1 (c) It is the responsibility of the parent or legal guardian
2 or, if the individual is at least age 18 or is an emancipated
3 minor, of the individual to prepare and submit the petition. A
4 school board is not required to provide any assistance in prepar-
5 ing the petition. Upon request by a parent or legal guardian or,
6 if the individual is at least age 18 or is an emancipated minor,
7 by the individual, a school board shall make available a form for
8 a petition.

9 (d) Not later than 10 school days after receiving a petition
10 for reinstatement under this subsection, a school board shall
11 appoint a committee to review the petition and any supporting
12 information submitted by the parent or legal guardian or, if the
13 individual is at least age 18 or is an emancipated minor, by the
14 individual. The committee shall consist of 2 school board mem-
15 bers, 1 school administrator, 1 teacher, and 1 parent of a pupil
16 in the school district. During this time the superintendent of
17 the school district may prepare and submit for consideration by
18 the committee information concerning the circumstances of the
19 expulsion and any factors mitigating for or against
20 reinstatement.

21 (e) Not later than 10 school days after all members are
22 appointed, the committee described in subdivision (d) shall
23 review the petition and any supporting information and informa-
24 tion provided by the school district and shall submit a recommen-
25 dation to the school board on the issue of reinstatement. The
26 recommendation shall be for unconditional reinstatement, for
27 conditional reinstatement, or against reinstatement, and shall be

1 accompanied by an explanation of the reasons for the
2 recommendation and of any recommended conditions for
3 reinstatement. The recommendation shall be based on considera-
4 tion of all of the following factors:

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

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

10 (iii) The age and maturity of the individual.

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

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

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

17 (vii) If the petition was filed by a parent or legal guardi-
18 an, the degree of cooperation and support that has been provided
19 by the parent or legal guardian and that can be expected if the
20 individual is reinstated, including, but not limited to, recep-
21 tiveness toward possible conditions placed on the reinstatement.

22 (f) Not later than the next regularly scheduled board meet-
23 ing after receiving the recommendation of the committee under
24 subdivision (e), a school board shall make a decision to uncondi-
25 tionally reinstate the individual, conditionally reinstate the
26 individual, or deny reinstatement of the individual. The
27 decision of the school board is final.

1 (g) A school board may require an individual and, if the
2 petition was filed by a parent or legal guardian, his or her
3 parent or legal guardian to agree in writing to specific condi-
4 tions before reinstating the individual in a conditional
5 reinstatement. The conditions may include, but are not limited
6 to, agreement to a behavior contract, which may involve the indi-
7 vidual, parent or legal guardian, and an outside agency; partici-
8 pation in or completion of an anger management program or other
9 appropriate counseling; periodic progress reviews; and specified
10 immediate consequences for failure to abide by a condition. A
11 parent or legal guardian or, if the individual is at least age 18
12 or is an emancipated minor, the individual may include proposed
13 conditions in a petition for reinstatement submitted under this
14 subsection.

15 (6) A school board or school administrator that complies
16 with subsection (2) is not liable for damages for expelling a
17 pupil pursuant to subsection (2), and the authorizing body of a
18 public school academy established under part 6a OR 6B is not
19 liable for damages for expulsion of a pupil by the public school
20 academy pursuant to subsection (2).

21 (7) Not later than ~~90 days after the effective date of the~~
22 ~~amendatory act that added this subsection~~ APRIL 1, 1995, the
23 department shall develop and distribute to all school districts a
24 form for a petition to be used under subsection (5).

25 (8) Subsections (2) to (7) do not diminish the due process
26 rights under federal law of a pupil who has been determined to be
27 eligible for special education programs and services.

1 (9) As used in this section:

2 (a) "Dangerous weapon" means that term as defined in
3 section 1313.

4 (b) "School board" means a school board, intermediate school
5 board, or the board of directors of a public school academy
6 established under part 6a OR 6B.

7 (c) "School district" means a school district, a local act
8 school district, an intermediate school district, or a public
9 school academy established under part 6a OR 6B.

10 (d) "Weapon free school zone" means that term as defined in
11 section 237a of the Michigan penal code, Act No. 328 of the
12 Public Acts of 1931, being section 750.237a of the Michigan
13 Compiled Laws.