



HOUSE BILL No. 5743

April 16, 1996, Introduced by Rep. Bryant 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 revised school code,"

as amended by Act No. 250 of the Public Acts of 1995, 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. 250 of the Public Acts of 1995,
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, commits arson in a
12 school building or on school grounds, or commits criminal sexual
13 conduct in a school building or on school grounds, the school
14 board, or the designee of the school board as described in sub-
15 section (1) on behalf of the school board, shall expel the pupil
16 from the school district permanently, subject to possible rein-
17 statement under subsection (5). However, a school board is not
18 required to expel a pupil for possessing a weapon if the pupil
19 establishes in a clear and convincing manner at least 1 of the
20 following:

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

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

25 (c) The pupil did not know or have reason to know that the
26 object or instrument possessed by the pupil constituted a
27 dangerous 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 partici-
8 pates cooperatively in an alternative education program appropri-
9 ate for individuals expelled pursuant to subsection (2) and in
10 its discretion admits the individual to that program, an individ-
11 ual expelled pursuant to subsection (2) is expelled from all
12 public schools in this state and the officials of a school dis-
13 trict shall not allow the individual to enroll in the school dis-
14 trict unless the individual has been reinstated under subsection
15 (5). Except as otherwise provided by law, a program operated for
16 individuals expelled pursuant to subsection (2) shall ensure that
17 those individuals are physically separated at all times during
18 the school day from the general pupil population. If an individ-
19 ual expelled from a school district pursuant to subsection (2) is
20 not placed in an alternative education program, the school dis-
21 trict may provide, or may arrange for the intermediate school
22 district to provide, appropriate instructional services to the
23 individual at home. The type of services provided shall be simi-
24 lar to those provided to homebound or hospitalized pupils under
25 section 109 of the state school aid act of 1979, being section
26 388.1709 of the Michigan Compiled Laws, and the services may be
27 contracted for in the same manner as under that section. This

1 subsection does not require a school district to expend more
2 money for providing services for a pupil expelled pursuant to
3 subsection (2) than the amount of the foundation allowance the
4 school district receives for the pupil under section 20 of the
5 state school aid act of 1979, being section 388.1620 of the
6 Michigan Compiled Laws.

7 (4) If a school board expels an individual pursuant to sub-
8 section (2), the school board shall ensure that, within 3 days
9 after the expulsion, an official of the school district refers
10 the individual to the appropriate county department of social
11 services or county community mental health agency and notifies
12 the individual's parent or legal guardian or, if the individual
13 is at least age 18 or is an emancipated minor, notifies the indi-
14 vidual of the referral.

15 (5) The parent or legal guardian of an individual expelled
16 pursuant to subsection (2) or, if the individual is at least age
17 18 or is an emancipated minor, the individual may petition the
18 expelling school board for reinstatement of the individual to
19 public education in the school district. If the expelling school
20 board denies a petition for reinstatement, the parent or legal
21 guardian or, if the individual is at least age 18 or is an eman-
22 cipated minor, the individual may petition another school board
23 for reinstatement of the individual in that other school
24 district. All of the following apply to reinstatement under this
25 subsection:

26 (a) For an individual who was enrolled in grade 5 or below
27 at the time of the expulsion and who has been expelled for

1 possessing a firearm or threatening another person with a
2 dangerous weapon, the parent or legal guardian or, if the indi-
3 vidual is at least age 18 or is an emancipated minor, the indi-
4 vidual may initiate a petition for reinstatement at any time
5 after the expiration of 60 school days after the date of
6 expulsion. For an individual who was enrolled in grade 5 or
7 below at the time of the expulsion and who has been expelled pur-
8 suant to subsection (2) for a reason other than possessing a
9 firearm or threatening another person with a dangerous weapon,
10 the parent or legal guardian or, if the individual is at least
11 age 18 or is an emancipated minor, the individual may initiate a
12 petition for reinstatement at any time. For an individual who
13 was in grade 6 or above at the time of expulsion, the parent or
14 legal guardian or, if the individual is at least age 18 or is an
15 emancipated minor, the individual may initiate a petition for
16 reinstatement at any time after the expiration of 150 school days
17 after the date of expulsion.

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

1 the time of the expulsion shall not be reinstated before the
2 expiration of 180 school days after the date of expulsion.

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

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

23 (e) Not later than 10 school days after all members are
24 appointed, the committee described in subdivision (d) shall
25 review the petition and any supporting information and informa-
26 tion provided by the school district and shall submit a
27 recommendation to the school board on the issue of

1 reinstatement. The recommendation shall be for unconditional
2 reinstatement, for conditional reinstatement, or against rein-
3 statement, and shall be accompanied by an explanation of the rea-
4 sons for the recommendation and of any recommended conditions for
5 reinstatement. The recommendation shall be based on considera-
6 tion of all of the following factors:

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

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

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

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

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

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

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

24 (f) Not later than the next regularly scheduled board meet-
25 ing after receiving the recommendation of the committee under
26 subdivision (e), a school board shall make a decision to
27 unconditionally reinstate the individual, conditionally reinstate

1 the individual, or deny reinstatement of the individual. The
2 decision of the school board is final.

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

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

23 (7) The department shall develop and distribute to all
24 school districts a form for a petition to be used under subsec-
25 tion (5).

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

4 (9) If a pupil expelled from a public school district pursu-
5 ant to subsection (2) is enrolled by a public school sponsored
6 alternative education program or a public school academy during
7 the period of expulsion, the public school academy or the alter-
8 native education program shall immediately become eligible for
9 the prorated share of either the public SCHOOL academy foundation
10 allowance or the expelling school district's foundation allow-
11 ance, whichever is higher.

12 (10) As used in this section:

13 (a) "Arson" means a felony violation of chapter X of the
14 Michigan penal code, Act No. 328 of the Public Acts of 1931,
15 being sections 750.71 to 750.80 of the Michigan Compiled Laws.

16 (b) "Criminal sexual conduct" means ~~a~~ CRIMINAL SEXUAL CON-
17 DUCT IN THE FIRST DEGREE IN violation of section 520b ~~, 520c,~~
18 ~~520d, 520e, or 520g~~ of Act No. 328 of the Public Acts of 1931,
19 being ~~sections 750.520b, 750.520c, 750.520d, 750.520e, and~~
20 ~~750.520g~~ SECTION 750.520B of the Michigan Compiled Laws, OR
21 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE IN VIOLATION OF SEC-
22 TION 520D OF ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SEC-
23 TION 750.520D OF THE MICHIGAN COMPILED LAWS.

24 (c) "Dangerous weapon" means that term as defined in
25 section 1313.

1 (d) "Firearm" means that term as defined in the federal
2 gun-free schools act of 1994, Public Law 103-227, 20
3 U.S.C. 3351.

4 (e) "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 (f) "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 (g) "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.