

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5424**

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1311 (MCL 380.1311), as amended by 1995 PA
250.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1311. (1) Subject to subsection (2), the school board,
2 or the school district superintendent, a school building princi-
3 pal, or another school district official if designated by the
4 school board, may authorize or order the suspension or expulsion
5 from school of a pupil guilty of gross misdemeanor or persistent
6 disobedience if, in the judgment of the school board or its des-
7 ignee, as applicable, the interest of the school is served by the
8 authorization or order. If there is reasonable cause to believe
9 that the pupil is handicapped, and the school district has not
10 evaluated the pupil in accordance with rules of the state board

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1 to determine if the student is handicapped, the pupil shall be
2 evaluated immediately by the intermediate school district of
3 which the school district is constituent in accordance with sec-
4 tion 1711.

5 (2) If a pupil possesses in a weapon free school zone a
6 weapon that constitutes a dangerous weapon, commits arson in a
7 school building or on school grounds, or commits criminal sexual
8 conduct in a school building or on school grounds, the school
9 board, or the designee of the school board as described in sub-
10 section (1) on behalf of the school board, shall expel the pupil
11 from the school district permanently, subject to possible rein-
12 statement under subsection (5). However, a school board is not
13 required to expel a pupil for possessing a weapon if the pupil
14 establishes in a clear and convincing manner at least 1 of the
15 following:

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

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

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

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

26 (3) If an individual is expelled pursuant to subsection (2),
27 the expelling school district shall enter on the individual's

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1 permanent record that he or she has been expelled pursuant to
2 subsection (2). Except if a school district operates or partici-
3 pates cooperatively in an alternative education program appropri-
4 ate for individuals expelled pursuant to subsection (2) and in
5 its discretion admits the individual to that program, an individ-
6 ual expelled pursuant to subsection (2) is expelled from all
7 public schools in this state and the officials of a school dis-
8 trict shall not allow the individual to enroll in the school dis-
9 trict unless the individual has been reinstated under subsection
10 (5). Except as otherwise provided by law, a program operated for
11 individuals expelled pursuant to subsection (2) shall ensure that
12 those individuals are physically separated at all times during
13 the school day from the general pupil population. If an individ-
14 ual expelled from a school district pursuant to subsection (2) is
15 not placed in an alternative education program, the school dis-
16 trict may provide, or may arrange for the intermediate school
17 district to provide, appropriate instructional services to the
18 individual at home. The type of services provided shall be simi-
19 lar to those provided to homebound or hospitalized pupils under
20 section 109 of the state school aid act of 1979, ~~being section~~
21 ~~388.1709 of the Michigan Compiled Laws~~ MCL 388.1709, and the
22 services may be contracted for in the same manner as under that
23 section. This subsection does not require a school district to
24 expend more money for providing services for a pupil expelled
25 pursuant to subsection (2) than the amount of the foundation
26 allowance the school district receives for the pupil under

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1 section 20 of the state school aid act of 1979, ~~being section~~
2 ~~388.1620 of the Michigan Compiled Laws~~ MCL 388.1620.

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

11 (5) The parent or legal guardian of an individual expelled
12 pursuant to subsection (2) or, if the individual is at least age
13 18 or is an emancipated minor, the individual may petition the
14 expelling school board for reinstatement of the individual to
15 public education in the school district. If the expelling school
16 board denies a petition for reinstatement, the parent or legal
17 guardian or, if the individual is at least age 18 or is an eman-
18 cipated minor, the individual may petition another school board
19 for reinstatement of the individual in that other school
20 district. All of the following apply to reinstatement under this
21 subsection:

22 (a) For an individual who was enrolled in grade 5 or below
23 at the time of the expulsion and who has been expelled for pos-
24 sassing a firearm or threatening another person with a dangerous
25 weapon, the parent or legal guardian or, if the individual is at
26 least age 18 or is an emancipated minor, the individual may
27 initiate a petition for reinstatement at any time after the

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

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

26 (c) It is the responsibility of the parent or legal guardian
27 or, if the individual is at least age 18 or is an emancipated

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

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

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

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1 reinstatement. The recommendation shall be based on
2 consideration of all of the following factors:

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

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

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

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

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

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

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

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

26 (g) A school board may require an individual and, if the
27 petition was filed by a parent or legal guardian, his or her

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

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

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

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

25 (9) If a pupil expelled from a public school district pursu-
26 ant to subsection (2) is enrolled by a public school sponsored
27 alternative education program or a public school academy during

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1 the period of expulsion, the public school academy or the
2 alternative education program shall immediately become eligible
3 for the prorated share of either the public academy foundation
4 allowance or the expelling school district's foundation allow-
5 ance, whichever is higher.

6 (10) A PUBLIC SCHOOL ACADEMY MAY BE ESTABLISHED UNDER PART
7 6A SPECIFICALLY FOR ENROLLING 1 OR MORE OF THE FOLLOWING TYPES OF
8 PUPILS:

9 (A) PUPILS PLACED IN THE PUBLIC SCHOOL ACADEMY BY A COURT OR
10 BY THE FAMILY INDEPENDENCE AGENCY UNDER THE DIRECTION OF A
11 COURT.

12 (B) PUPILS WHO HAVE BEEN EXPELLED UNDER SUBSECTION (2).

13 (C) PUPILS WHO HAVE BEEN EXPELLED UNDER SECTION 1311A.

14 (11) NOTWITHSTANDING SECTION 504(2), IF IT IS STATED IN THE
15 CONTRACT AUTHORIZING A PUBLIC SCHOOL ACADEMY DESCRIBED IN SUBSEC-
16 TION (10) THAT THE PUBLIC SCHOOL ACADEMY IS ESTABLISHED SPECIFI-
17 CALLY FOR ENROLLING 1 OR MORE OF THE TYPES OF PUPILS DESCRIBED IN
18 SUBSECTION (10), THE PUBLIC SCHOOL ACADEMY MAY LIMIT ENROLLMENT
19 ONLY TO THOSE PUPILS. A PUBLIC SCHOOL ACADEMY THAT LIMITS
20 ENROLLMENT AS DESCRIBED IN THIS SUBSECTION IS NOT REQUIRED TO
21 KEEP ANY GROUP OF PUPILS DESCRIBED IN SUBSECTION (10)(A), (B), OR
22 (C) PHYSICALLY SEPARATED FROM ANOTHER GROUP OF THOSE PUPILS, AS
23 MIGHT OTHERWISE BE REQUIRED UNDER SUBSECTION (3) OR SECTION
24 1311A(2).

(12) IF THE FAMILY INDEPENDENCE AGENCY, DEPARTMENT OF
CORRECTIONS, OR ANOTHER STATE DEPARTMENT OR AGENCY HAS CUSTODY OF OR
JURISDICTION OVER A CHILD, THAT STATE DEPARTMENT OR AGENCY HAS THE
LEGAL AND FINANCIAL OBLIGATION FOR EDUCATING THE CHILD.

25 (13) ~~(10)~~ As used in this section:

26 (a) "Arson" means a felony violation of chapter X of the
27 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~

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1 ~~being sections 750.71 to 750.80 of the Michigan Compiled Laws~~
2 1931 PA 328, MCL 750.71 TO 750.80.

3 (b) "Criminal sexual conduct" means a violation of
4 section 520b, 520c, 520d, 520e, or 520g of ~~Act No. 328 of the~~
5 ~~Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d,~~
6 ~~750.520e, and 750.520g of the Michigan Compiled Laws~~ THE
7 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,
8 750.520D, 750.520E, AND 750.520G.

9 (c) "Dangerous weapon" means that term as defined in
10 section 1313.

11 (d) "Firearm" means that term as defined in ~~the federal~~
12 ~~gun-free schools act of 1994, Public Law 103-227, 20 U.S.C. 3351-~~
13 SECTION 921 OF TITLE 18 OF THE UNITED STATES CODE, 18
14 U.S.C. 921.

15 (e) "School board" means a school board, intermediate school
16 board, or the board of directors of a public school academy
17 established under part 6a. ~~or 6b.~~

18 (f) "School district" means a school district, a local act
19 school district, an intermediate school district, or a public
20 school academy established under part 6a. ~~or 6b.~~

21 (g) "Weapon free school zone" means that term as defined in
22 section 237a of the Michigan penal code, ~~Act No. 328 of the~~
23 ~~Public Acts of 1931, being section 750.237a of the Michigan~~
24 ~~Compiled Laws~~ 1931 PA 328, MCL 750.237A.