

HOUSE BILL No. 5694

March 17, 1998, Introduced by Reps. Gire, Schauer, LaForge, Mans, Bogardus, Cherry, Curtis, Scott, Thomas, Hammerstrom, Jelinek, Agee, Cropsey, Callahan, Wojno and Bankes and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 1300a and 1312 (MCL 380.1300a and 380.1312), section 1300a as added by 1993 PA 335, and section 1312 as amended by 1995 PA 289, and by adding section 1310.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1300a. (1) The board of each school district and the
2 board of directors of each public school academy shall adopt and
3 implement a written sexual harassment policy. At a minimum, the
4 policy shall prohibit sexual harassment by school district
5 employees, board members and pupils directed toward other employ-
6 ees or pupils, shall specify penalties for violation of the
7 policy and shall define conduct that should be reported to law
8 enforcement officials and provide for that reporting.

1 (2) The office for safe schools created under section 1309
2 shall develop and distribute to school districts and public
3 school academies a model sexual harassment policy that conforms
4 with subsection (1); that sets forth specific reporting, enforce-
5 ment, and due process procedures; and that defines conduct that
6 should be reported to law enforcement officials and provides for
7 that reporting.

8 SEC. 1310. (1) NOT LATER THAN JULY 1, 1999, A SCHOOL BOARD
9 SHALL DEVELOP, PUBLISH, AND DISTRIBUTE TO EACH PUPIL AND TO EACH
10 PUPIL'S PARENT OR LEGAL GUARDIAN A SUSPENSION/EXPULSION POLICY
11 DESCRIBING THE TYPES OF DISCIPLINARY VIOLATIONS THAT MAY RESULT
12 IN SUSPENSION OR EXPULSION FROM SCHOOL OR IN AN IN-SCHOOL SUSPEN-
13 SION, AND SHALL DEVELOP, PUBLISH, AND DISTRIBUTE TO EACH PUPIL
14 AND TO EACH PUPIL'S PARENT OR LEGAL GUARDIAN A DUE PROCESS POLICY
15 DESCRIBING THE DUE PROCESS THAT WILL BE PROVIDED TO A PUPIL
16 BEFORE A PUPIL IS SUSPENDED OR EXPELLED FROM SCHOOL OR PLACED ON
17 AN IN-SCHOOL SUSPENSION. TO THE GREATEST EXTENT PRACTICABLE, THE
18 SCHOOL BOARD SHALL OBTAIN AND KEEP ON RECORD A WRITTEN ACKNOWL-
19 EDGMENT FROM EACH PUPIL AND PARENT OR LEGAL GUARDIAN INDICATING
20 RECEIPT OF A COPY OF THESE POLICIES. IF THE SCHOOL DISTRICT'S
21 CODE OF STUDENT CONDUCT DEVELOPED UNDER SECTION 1312 CONTAINS ALL
22 OF THE PROVISIONS REQUIRED UNDER THIS SECTION, THE PUBLICATION
23 AND DISTRIBUTION REQUIREMENTS OF THIS SUBSECTION MAY BE MET BY
24 DISTRIBUTING TO PUPILS AND PARENTS AND LEGAL GUARDIANS THE SCHOOL
25 DISTRICT'S CODE OF STUDENT CONDUCT DEVELOPED UNDER SECTION 1312.

26 (2) A SCHOOL DISTRICT'S DUE PROCESS POLICY REQUIRED UNDER
27 THIS SECTION SHALL INCLUDE AT LEAST ALL OF THE FOLLOWING:

1 (A) FOR A SUSPENSION, ALL OF THE FOLLOWING SHALL APPLY:

2 (i) A PUPIL SHALL NOT BE SUSPENDED UNLESS THE PUPIL IS FIRST
3 INFORMED OF THE REASONS FOR THE SUSPENSION AND GIVEN AN OPPORTU-
4 NITY TO RESPOND. HOWEVER, PRIOR NOTICE OF AN INTENDED SUSPENSION
5 IS NOT REQUIRED IF THE PUPIL'S PRESENCE AT SCHOOL POSES A CLEAR
6 AND IMMEDIATE THREAT TO THE HEALTH, SAFETY, OR WELFARE OF THE
7 SCHOOL COMMUNITY.

8 (ii) IF A PUPIL IS SUSPENDED, THE SCHOOL OFFICIAL ORDERING
9 THE SUSPENSION SHALL INFORM THE PUPIL'S PARENT OR LEGAL GUARDIAN
10 AND THE SUPERINTENDENT OF THE SCHOOL DISTRICT IN WRITING OF THE
11 SUSPENSION AS SOON AS PRACTICABLE AFTER THE SUSPENSION.

12 (iii) IF THE SUSPENSION EXCEEDS 3 SCHOOL DAYS, THE PUPIL AND
13 THE PUPIL'S PARENT OR LEGAL GUARDIAN SHALL BE GIVEN THE OPPORTU-
14 NITY FOR AN INFORMAL HEARING BEFORE THE SCHOOL DISTRICT SUPERIN-
15 TENDENT OR HIS OR HER DESIGNEE TO DISCUSS THE SUSPENSION AND TO
16 ALLOW THE PUPIL TO PRESENT ARGUMENTS AGAINST THE SUSPENSION. AT
17 THE INFORMAL HEARING, THE PUPIL AND THE PUPIL'S PARENT OR LEGAL
18 GUARDIAN SHALL BE PROVIDED THE RIGHT TO SPEAK, TO PRESENT WIT-
19 NESSES, AND TO QUESTION ANY WITNESSES PRESENT AT THE HEARING.

20 (iv) A PUPIL WHO IS SUSPENDED HAS THE RESPONSIBILITY TO MAKE
21 UP EXAMINATIONS AND ASSIGNMENTS MISSED DURING THE SUSPENSION AND
22 SHALL BE GIVEN THE OPPORTUNITY TO COMPLETE THOSE EXAMINATIONS AND
23 ASSIGNMENTS WITHIN GUIDELINES ESTABLISHED BY THE SCHOOL BOARD.

24 (v) THE LENGTH OF A SUSPENSION SHALL NOT EXCEED 10 CONSECU-
25 TIVE SCHOOL DAYS.

26 (B) FOR AN IN-SCHOOL SUSPENSION, ALL OF THE FOLLOWING SHALL
27 APPLY:

1 (i) A PUPIL SHALL NOT BE PLACED ON AN IN-SCHOOL SUSPENSION
2 UNLESS THE PUPIL AND THE PUPIL'S PARENT OR LEGAL GUARDIAN ARE
3 FIRST INFORMED OF THE REASONS FOR THE IN-SCHOOL SUSPENSION AND
4 GIVEN AN OPPORTUNITY TO RESPOND.

5 (ii) DURING AN IN-SCHOOL SUSPENSION, SCHOOL OFFICIALS SHALL
6 ARRANGE FOR CONTINUATION OF THE PUPIL'S EDUCATIONAL PROGRAM.

7 (iii) BEFORE CONTINUING AN IN-SCHOOL SUSPENSION BEYOND 10
8 CONSECUTIVE SCHOOL DAYS, THE PUPIL AND THE PUPIL'S PARENT OR
9 LEGAL GUARDIAN SHALL BE GIVEN THE OPPORTUNITY FOR AN INFORMAL
10 HEARING BEFORE THE SCHOOL DISTRICT SUPERINTENDENT OR HIS OR HER
11 DESIGNEE TO DISCUSS THE PROPOSED CONTINUATION OF THE IN-SCHOOL
12 SUSPENSION AND TO ALLOW THE PUPIL TO PRESENT ARGUMENTS AGAINST
13 CONTINUATION OF THE IN-SCHOOL SUSPENSION. AT THE INFORMAL HEAR-
14 ING, THE PUPIL AND THE PUPIL'S PARENT OR LEGAL GUARDIAN SHALL BE
15 PROVIDED THE RIGHT TO SPEAK, TO PRESENT WITNESSES, AND TO QUES-
16 TION ANY WITNESSES PRESENT AT THE HEARING.

17 (c) FOR AN EXPULSION, ALL OF THE FOLLOWING APPLY:

18 (i) A PUPIL SHALL NOT BE EXPELLED UNLESS THE PUPIL AND THE
19 PUPIL'S PARENT OR LEGAL GUARDIAN ARE FIRST INFORMED BY CERTIFIED
20 MAIL OF THE PROPOSED EXPULSION, OF THE REASONS FOR THE EXPULSION,
21 AND OF THE RIGHT TO A FORMAL HEARING BEFORE THE SCHOOL BOARD
22 UNDER SUBPARAGRAPH (ii).

23 (ii) BEFORE THE PUPIL IS EXPELLED, THE PUPIL AND THE PUPIL'S
24 PARENT OR LEGAL GUARDIAN SHALL BE GIVEN THE OPPORTUNITY FOR A
25 FORMAL HEARING BEFORE THE SCHOOL BOARD. THE FORMAL HEARING SHALL
26 BE CONVENED WITHIN THE FIRST 10 DAYS THE PUPIL IS EXCLUDED FROM
27 SCHOOL. AT THE FORMAL HEARING, THE PUPIL AND THE PUPIL'S PARENT

1 OR LEGAL GUARDIAN HAVE THE RIGHT TO HAVE THE DISPUTE HEARD BY THE
2 SCHOOL BOARD AND TO HAVE A DECISION MADE BY A MAJORITY VOTE OF
3 THE ENTIRE SCHOOL BOARD; THE RIGHT TO SUFFICIENT NOTICE OF THE
4 TIME AND PLACE OF THE HEARING; THE RIGHT TO QUESTION A MEMBER OF
5 THE SCHOOL STAFF OR A PUPIL INVOLVED IN OR WITNESS TO THE INCI-
6 DENT, EXCEPT THAT IF A PUPIL INVOLVED IN OR WITNESS TO THE INCI-
7 DENT IS CONSIDERED TO BE IN JEOPARDY BY THE ADMINISTRATION, THAT
8 PUPIL NEED NOT BE PRESENT; THE RIGHT TO PRESENT EVIDENCE IN HIS
9 OR HER BEHALF; THE RIGHT TO REBUT ADVERSE TESTIMONY; THE RIGHT TO
10 BE REPRESENTED BY QUALIFIED COUNSEL AT THE HEARING; THE RIGHT TO
11 A RECORD OF THE HEARING; AND THE RIGHT TO APPEAL AN ADVERSE DECI-
12 SION TO A COURT OF COMPETENT JURISDICTION.

13 (*iii*) DURING THE TIME A PUPIL IS EXCLUDED FROM SCHOOL BEFORE
14 THE FORMAL HEARING UNDER SUBPARAGRAPH (*ii*), THE SCHOOL DISTRICT
15 SHALL PLACE THE PUPIL IN AN APPROPRIATE ALTERNATIVE EDUCATIONAL
16 PLACEMENT, WHICH MAY INCLUDE HOME STUDY.

17 (3) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (2), A
18 SCHOOL DISTRICT'S DUE PROCESS POLICY UNDER THIS SECTION SHALL
19 INCLUDE A DESCRIPTION OF THE PROCEDURES FOR REINSTATEMENT OF AN
20 EXPELLED PUPIL UNDER SECTION 1311 OR 1311A.

21 (4) THE STATE BOARD SHALL DEVELOP AND DISTRIBUTE TO SCHOOL
22 DISTRICTS A MODEL DUE PROCESS POLICY THAT SCHOOL DISTRICTS MAY
23 ADOPT FOR USE IN PROCEEDINGS DESCRIBED UNDER THIS SECTION AND
24 SIMILAR PROCEEDINGS.

25 (5) A DUE PROCESS POLICY DEVELOPED UNDER THIS SECTION SHALL
26 NOT DIMINISH THE DUE PROCESS RIGHTS UNDER FEDERAL LAW OF A PUPIL

1 WHO HAS BEEN DETERMINED TO BE ELIGIBLE FOR SPECIAL EDUCATION
2 PROGRAMS AND SERVICES.

3 (6) AS USED IN THIS SECTION:

4 (A) "EXPULSION" MEANS THAT A PUPIL IS EXCLUDED FROM SCHOOL
5 FOR MORE THAN 10 CONSECUTIVE SCHOOL DAYS.

6 (B) "IN-SCHOOL SUSPENSION" MEANS THAT A PUPIL IS EXCLUDED
7 FROM 1 OR MORE PARTICULAR CLASSES BUT NOT FROM SCHOOL. IN-SCHOOL
8 SUSPENSION DOES NOT INCLUDE REMOVAL FROM A CLASS, SUBJECT, OR
9 ACTIVITY UNDER SECTION 1311C.

10 (C) "SCHOOL BOARD" AND "SCHOOL DISTRICT" MEAN THOSE TERMS AS
11 DEFINED IN SECTION 1311.

12 (D) "SUSPENSION" MEANS THAT A PUPIL IS EXCLUDED FROM SCHOOL
13 FOR NOT MORE THAN 10 DAYS, BUT DOES NOT INCLUDE REMOVAL FROM A
14 CLASS, SUBJECT, OR ACTIVITY UNDER SECTION 1311C.

15 Sec. 1312. (1) As used in this section, "corporal
16 punishment" means the deliberate infliction of physical pain by
17 hitting, paddling, spanking, slapping, or any other physical
18 force used as a means of discipline.

19 (2) Corporal punishment does not include physical pain
20 caused by reasonable physical activities associated with athletic
21 training.

22 (3) A person employed by or engaged as a volunteer or con-
23 tractor by a local or intermediate school board or public school
24 academy shall not inflict or cause to be inflicted corporal pun-
25 ishment upon any pupil under any circumstances.

26 (4) A person employed by or engaged as a volunteer or
27 contractor by a local or intermediate school board or public

1 school academy may use reasonable physical force upon a pupil as
2 necessary to maintain order and control in a school or
3 school-related setting for the purpose of providing an environ-
4 ment conducive to safety and learning. In maintaining that order
5 and control, the person may use physical force upon a pupil as
6 may be necessary:

7 (a) To restrain or remove a pupil whose behavior is inter-
8 fering with the orderly exercise and performance of school dis-
9 trict or public school academy functions within a school or at a
10 school-related activity, if that pupil has refused to comply with
11 a request to refrain from further disruptive acts.

12 (b) For self-defense or the defense of another.

13 (c) To prevent a pupil from inflicting harm on himself or
14 herself.

15 (d) To quell a disturbance that threatens physical injury to
16 any person.

17 (e) To obtain possession of a weapon or other dangerous
18 object upon or within the control of a pupil.

19 (f) To protect property.

20 (5) A person employed by or engaged as a volunteer or con-
21 tractor by a local or intermediate school board or public school
22 academy who exercises necessary reasonable physical force upon a
23 pupil, or upon another person of school age in a school-related
24 setting, as described in subsection (4) is not liable in a civil
25 action for damages arising from the use of that physical force as
26 provided in ~~Act No. 170 of the Public Acts of 1964, being~~

1 ~~sections 691.1401 to 691.1415 of the Michigan Compiled Laws~~ 1964
2 PA 170, MCL 691.1401 TO 691.1415.

3 (6) A person who violates subsection (3) or (4) may be
4 appropriately disciplined by his or her school board or public
5 school academy.

6 (7) In determining whether an employee, volunteer, or con-
7 tractor has acted in accordance with subsection (4), deference
8 shall be given to reasonable good-faith judgments made by that
9 person.

10 (8) A local or intermediate school district or a public
11 school academy shall develop and implement a code of student con-
12 duct and shall enforce its provisions with regard to pupil mis-
13 conduct in a classroom, elsewhere on school premises, on a school
14 bus or other school-related vehicle, or at a school sponsored
15 activity or event whether or not it is held on school premises.
16 THE LOCAL OR INTERMEDIATE SCHOOL DISTRICT OR PUBLIC SCHOOL ACAD-
17 EMY SHALL PUBLISH THE CODE OF STUDENT CONDUCT AND DISTRIBUTE A
18 COPY OF THE CODE OF STUDENT CONDUCT TO EACH PUPIL AND TO EACH
19 PUPIL'S PARENT OR LEGAL GUARDIAN. TO THE GREATEST EXTENT PRACTI-
20 CABLE, THE LOCAL OR INTERMEDIATE SCHOOL DISTRICT OR PUBLIC SCHOOL
21 ACADEMY SHALL OBTAIN AND KEEP ON RECORD A WRITTEN ACKNOWLEDGMENT
22 FROM EACH PUPIL AND PARENT OR LEGAL GUARDIAN INDICATING RECEIPT
23 OF A COPY OF THE CODE OF STUDENT CONDUCT.

24 (9) The department shall develop a model list of alterna-
25 tives to the use of corporal punishment. This model list shall
26 be developed in consultation with organizations that represent
27 the interests of teachers, school employees, school boards,

1 school administrators, pupils, parents, and child advocates, plus
 2 any other organization that the state board of education may wish
 3 to consult. The department shall send this model list to each
 4 school district, public school academy, and intermediate school
 5 district in the state and to each nonpublic school in the state
 6 that requests it. A local or intermediate school board or public
 7 school academy shall approve and cause to be distributed to each
 8 employee, volunteer, and contractor a list of alternatives to the
 9 use of corporal punishment. Upon request, the department of edu-
 10 cation shall provide assistance to schools in the development of
 11 programs and materials to implement this section.

12 (10) Any resolution, bylaw, rule, policy, ordinance, or
 13 other authority permitting corporal punishment is void.

14 Enacting section 1. This amendatory act does not take
 15 effect unless all of the following bills of the 89th Legislature
 16 are enacted into law:

17 (a) Senate Bill No. 313.

18 (b) Senate Bill No. 689.

19 (c) House Bill No. 4075.

20 (d) House Bill No. 5424.

21 (e) House Bill No. 5428.

22 (f) House Bill No. 5478.

23 (g) House Bill No. 5482.

24 (h) Senate Bill No. _____ or House Bill No. _____

25 (request no. 05598'98).

26 (i) Senate Bill No. _____ or House Bill No. _____

27 (request no. 05599'98).

- 1 (j) Senate Bill No. _____ or House Bill No. _____
- 2 (request no. 05847'98).
- 3 (k) Senate Bill No. _____ or House Bill No. _____
- 4 (request no. 05848'98).
- 5 (l) Senate Bill No. _____ or House Bill No. _____
- 6 (request no. 05849'98).
- 7 (m) Senate Bill No. _____ or House Bill No. _____
- 8 (request no. 05851'98).