

HOUSE BILL No. 5695

March 17, 1998, Introduced by Reps. Mans, Schauer, LaForge, Bogardus, Gire, Brewer, Schermesser, Wojno, Curtis, Callahan, Hale, Thomas, DeHart, Rison and Hammerstrom and referred to the Committee on Education.

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), AND USING THE
2 PROCEDURES PRESCRIBED IN THE SCHOOL DISTRICT'S DUE PROCESS POLICY
3 UNDER SECTION 1310, the school board, or the school district
4 superintendent, a school building principal, or another school
5 district official if designated by the school board, may autho-
6 rize or order the suspension or expulsion from school of a pupil
7 ~~guilty of gross misdemeanor or persistent disobedience~~ WHO COM-
8 MITS A DISCIPLINARY VIOLATION OF THE TYPE DESCRIBED IN THE
9 SUSPENSION/EXPULSION POLICY DEVELOPED UNDER SECTION 1310 if, in
10 the judgment of the school board or its designee, as applicable,

1 the interest of the school is served by the authorization or
2 order. If there is reasonable cause to believe that the pupil is
3 ~~handicapped~~ A PERSON WITH DISABILITIES, and the school district
4 has not evaluated the pupil in accordance with rules of the state
5 board to determine if the student is ~~handicapped~~ A PERSON WITH
6 DISABILITIES, the pupil shall be evaluated immediately by the
7 intermediate school district of which the school district is con-
8 stituent in accordance with section 1711.

9 (2) If IT IS DETERMINED USING THE PROCEDURES PRESCRIBED IN
10 THE SCHOOL DISTRICT'S DUE PROCESS POLICY UNDER SECTION 1310 THAT
11 a pupil ~~possesses~~ POSSESSED in a weapon free school zone a
12 weapon that constitutes a dangerous weapon, ~~commits~~ COMMITTED
13 arson in a school building or on school grounds, or ~~commits~~
14 COMMITTED criminal sexual conduct in a school building or on
15 school grounds, the school board, or the designee of the school
16 board as described in subsection (1) on behalf of the school
17 board, shall expel the pupil from the school district permanent-
18 ly, subject to possible reinstatement under subsection (5).
19 However, a school board is not required to expel a pupil for pos-
20 sessed a weapon if the pupil establishes in a clear and convinc-
21 ing manner at least 1 of the following:

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

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

1 (c) The pupil did not know or have reason to know that the
2 object or instrument possessed by the pupil constituted a
3 dangerous weapon.

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

7 (3) If an individual is expelled pursuant to subsection (2),
8 the expelling school district shall enter on the individual's
9 permanent record that he or she has been expelled pursuant to
10 subsection (2) AND THE REASON FOR THE EXPULSION. ~~Except if a~~
11 ~~school district operates or participates cooperatively in an~~
12 ~~alternative education program appropriate for individuals~~
13 ~~expelled pursuant to subsection (2) and in its discretion admits~~
14 ~~the individual to that program, an~~ AN individual expelled pursu-
15 ant to subsection (2) is expelled from THE REGULAR EDUCATION PRO-
16 GRAM IN all public schools in this state and the officials of a
17 school district shall not allow the individual to enroll in the
18 REGULAR EDUCATION PROGRAM IN THE school district unless the indi-
19 vidual has been reinstated under subsection (5). THE PUPIL SHALL
20 BE PLACED IN AN APPROPRIATE ALTERNATIVE EDUCATION PROGRAM AS PRO-
21 VIDED UNDER SUBSECTION (4) AND SECTION 1311B. Except as otherwise
22 provided by law, a program operated for individuals expelled pur-
23 suant to subsection (2) shall ensure that those individuals are
24 physically separated at all times during the school day from the
25 general pupil population. If an individual expelled from a
26 school district pursuant to subsection (2) is not placed in an
27 alternative education program, the school district ~~may~~ SHALL

1 provide, or ~~may~~ SHALL arrange for the intermediate school
2 district to provide, appropriate instructional services to the
3 individual at home, SUBJECT TO THE INDIVIDUALIZED ALTERNATIVE
4 EDUCATION PLAN DEVELOPED FOR THE PUPIL UNDER SUBSECTION (4) AND
5 SECTION 1311B. ~~The type of services provided shall be similar~~
6 ~~to those provided to homebound or hospitalized pupils under sec-~~
7 ~~tion 109 of the state school aid act of 1979, being section~~
8 ~~388.1709 of the Michigan Compiled Laws, and the services may be~~
9 ~~contracted for in the same manner as under that section.~~ This
10 subsection does not require a school district to expend more
11 money for providing services for a pupil expelled pursuant to
12 subsection (2) than the amount of ~~the foundation allowance~~
13 TOTAL STATE SCHOOL AID AND FEDERAL FUNDS RECEIVED BY the school
14 district ~~receives for~~ ATTRIBUTABLE TO the pupil. ~~under section~~
15 ~~20 of the state school aid act of 1979, being section 388.1620 of~~
16 ~~the Michigan Compiled Laws.~~

17 (4) If a school board expels an individual pursuant to sub-
18 section (2), the school board shall ensure that, within 3 days
19 after the expulsion, an official of the school district refers
20 the individual to the appropriate county department of social
21 services or county community mental health agency and notifies
22 the individual's parent or legal guardian or, if the individual
23 is at least age 18 or is an emancipated minor, notifies the indi-
24 vidual of the referral. THE SCHOOL BOARD ALSO SHALL PROVIDE FOR
25 AN INDIVIDUALIZED ALTERNATIVE EDUCATION PLAN FOR THE PUPIL TO
26 ENSURE THAT THE PUPIL IS PROVIDED WITH APPROPRIATE ALTERNATIVE
27 EDUCATION AS REQUIRED UNDER SECTION 1311B. THE INDIVIDUALIZED

1 ALTERNATIVE EDUCATION PLAN SHALL BE DEVELOPED BY SCHOOL OFFICIALS
2 IN COLLABORATION WITH TEACHERS, THE PUPIL'S PARENTS OR LEGAL
3 GUARDIAN, AND THE SUPPORTIVE AGENCIES DESCRIBED IN THIS
4 SUBSECTION.

5 (5) The parent or legal guardian of an individual expelled
6 pursuant to subsection (2) or, if the individual is at least age
7 18 or is an emancipated minor, the individual may petition the
8 expelling school board for reinstatement of the individual to
9 ~~public education~~ THE REGULAR EDUCATION PROGRAM in the school
10 district BEFORE THE END OF THE EXPULSION. If the expelling
11 school board denies a petition for reinstatement, the parent or
12 legal guardian or, if the individual is at least age 18 or is an
13 emancipated minor, the individual may petition another school
14 board for reinstatement of the individual TO THE REGULAR EDUCA-
15 TION PROGRAM in that other school district BEFORE THE END OF THE
16 EXPULSION. All of the following apply to reinstatement TO REGU-
17 LAR EDUCATION under this subsection:

18 (a) For an individual who was enrolled in grade 5 or below
19 at the time of the expulsion and who has been expelled for pos-
20 sessing a firearm or threatening another person with a dangerous
21 weapon, the parent or legal guardian or, if the individual is at
22 least age 18 or is an emancipated minor, the individual may ini-
23 tiate a petition for reinstatement at any time after the expira-
24 tion of 60 school days after the date of expulsion. For an indi-
25 vidual who was enrolled in grade 5 or below at the time of the
26 expulsion and who has been expelled pursuant to subsection (2)
27 for a reason other than possessing a firearm or threatening

1 another person with a dangerous weapon, the parent or legal
2 guardian or, if the individual is at least age 18 or is an eman-
3 cipated minor, the individual may initiate a petition for rein-
4 statement at any time. For an individual who was in grade 6 or
5 above at the time of expulsion, the parent or legal guardian or,
6 if the individual is at least age 18 or is an emancipated minor,
7 the individual may initiate a petition for reinstatement at any
8 time after the expiration of 150 school days after the date of
9 expulsion.

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

22 (c) It is the responsibility of the parent or legal guardian
23 or, if the individual is at least age 18 or is an emancipated
24 minor, of the individual to prepare and submit the petition. A
25 school board is not required to provide any assistance in prepar-
26 ing the petition. Upon request by a parent or legal guardian or,
27 if the individual is at least age 18 or is an emancipated minor,

1 by the individual, a school board shall make available a form for
2 a petition.

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

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

1 (i) The extent to which reinstatement of the individual TO A
2 REGULAR EDUCATION PROGRAM would create a risk of harm to pupils
3 or school personnel.

4 (ii) The extent to which reinstatement of the individual TO
5 A REGULAR EDUCATION PROGRAM would create a risk of school dis-
6 trict or individual liability for the school board or school dis-
7 trict 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

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

14 (6) A school board or school administrator that complies
15 with subsection (2) is not liable for damages for expelling a
16 pupil pursuant to subsection (2) IF THE SCHOOL BOARD OR SCHOOL
17 ADMINISTRATOR DOES NOT VIOLATE THE PUPIL'S CIVIL AND DUE PROCESS
18 RIGHTS IN THE EXPULSION, and the authorizing body of a public
19 school academy established under part 6a ~~or part 6b~~ is not
20 liable for damages for expulsion of a pupil by the public school
21 academy pursuant to subsection (2) IF THE SCHOOL BOARD OR SCHOOL
22 ADMINISTRATOR DOES NOT VIOLATE THE PUPIL'S CIVIL AND DUE PROCESS
23 RIGHTS IN THE EXPULSION.

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

1 (8) THE BOARD OF A SCHOOL DISTRICT SHALL USE THE
2 LOCALLY-ADOPTED DUE PROCESS POLICY REQUIRED UNDER SECTION 1310 IN
3 EXPULSION PROCEEDINGS UNDER THIS SECTION. THE STATE BOARD SHALL
4 DEVELOP AND DISTRIBUTE TO SCHOOL DISTRICTS A MODEL DUE PROCESS
5 POLICY THAT SCHOOL DISTRICTS MAY ADOPT FOR USE IN REINSTATEMENT
6 PROCEEDINGS UNDER THIS SECTION AND SIMILAR PROCEEDINGS.

7 (9) ~~(8)~~ Subsections (2) to ~~(7)~~ (8) do not diminish the
8 due process rights under federal law of a pupil who has been
9 determined to be eligible for special education programs and
10 services.

11 ~~(9) If a pupil expelled from a public school district pur-~~
12 ~~suant to subsection (2) is enrolled by a public school sponsored~~
13 ~~alternative education program or a public school academy during~~
14 ~~the period of expulsion, the public school academy or the alter-~~
15 ~~native education program shall immediately become eligible for~~
16 ~~the prorated share of either the public academy foundation allow-~~
17 ~~ance or the expelling school district's foundation allowance,~~
18 ~~whichever is higher.~~

19 (10) AT LEAST ANNUALLY, EACH SCHOOL DISTRICT SHALL PREPARE
20 AND SUBMIT TO THE DEPARTMENT, IN THE FORM AND MANNER PRESCRIBED
21 BY THE DEPARTMENT, A REPORT STATING THE NUMBER OF PUPILS EXPELLED
22 PURSUANT TO SUBSECTION (2) DURING THE IMMEDIATELY PRECEDING
23 SCHOOL YEAR, WITH A BRIEF DESCRIPTION OF THE INCIDENT THAT CAUSED
24 EACH EXPULSION.

25 (11) A SCHOOL BOARD OR ITS DESIGNEE AS DESCRIBED IN
26 SUBSECTION (1) SHALL REPORT ALL ACTS DESCRIBED IN SUBSECTION (2)
27 TO STATE OR LOCAL LAW ENFORCEMENT OFFICIALS IN A TIMELY MANNER.

1 (12) ~~(10)~~ As used in this section:

2 (a) "Arson" means a felony violation of chapter X of the
3 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
4 ~~being sections 750.71 to 750.80 of the Michigan Compiled Laws~~
5 1931 PA 328, MCL 750.71 TO 750.80.

6 (b) "Criminal sexual conduct" means a violation of
7 section 520b, 520c, 520d, 520e, or 520g of Act No. 328 of the
8 ~~Public Acts of 1931, being sections 750.520b, 750.520c,~~
9 ~~750.520d, 750.520e, and 750.520g of the Michigan Compiled Laws~~
10 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,
11 750.520D, 750.520E, AND 750.520G.

12 (c) "Dangerous weapon" means that term as defined in
13 section 1313.

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

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

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

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

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

4 (a) Senate Bill No. 313.

5 (b) Senate Bill No. 689.

6 (c) House Bill No. 4075.

7 (d) House Bill No. 5424.

8 (e) House Bill No. 5428.

9 (f) House Bill No. 5478.

10 (g) House Bill No. 5482.

11 (h) Senate Bill No. _____ or House Bill No. _____ (request
12 no. 05598'98).

13 (i) Senate Bill No. _____ or House Bill No. _____ (request
14 no. 05599'98).

15 (j) Senate Bill No. _____ or House Bill No. _____ (request
16 no. 05847'98).

17 (k) Senate Bill No. _____ or House Bill No. _____ (request
18 no. 05848'98).

19 (l) Senate Bill No. _____ or House Bill No. _____ (request
20 no. 05849'98).

21 (m) Senate Bill No. _____ or House Bill No. _____ (request
22 no. 05850'98).