

# Legislative Analysis



## SCHOOL EXPULSION: CONFLICT OF INTEREST AND DUE PROCESS

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**House Bill 5411 (Substitute H-1)**  
**Sponsor: Rep. Glenn Steil, Jr.**

**House Bill 5832 (Substitute H-1)**  
**Sponsor: Rep. Robert Dean**  
**Committee: Education**

### **Revised First Analysis (4-16-08)**

**BRIEF SUMMARY:** The bills would require school district officials to provide students who face permanent expulsion with notice of their due process rights; develop policies to provide those rights; and abstain from voting on a student's expulsion if there is a conflict of interest.

**FISCAL IMPACT:** The bills would have no fiscal impact on state or local government.

### **THE APPARENT PROBLEM:**

According to the "School Safety Practices Report, 2001-2002 School Year" issued by the Center for Educational Performance and Information (CEPI) in February 2003, there were 1,588 students among Michigan's 1.7 million students (about one-tenth of one percent) who experienced some type of expulsion during that school year. At least one expulsion occurred in 36 percent of Michigan's school districts (289), and expulsions were reported by officials in 14.5 percent of Michigan's 3,713 school buildings.

The incident type for which the most students were reported as having been expelled was "physical assault" (defined in the School Code as 'intentionally causing or attempting to cause physical harm to another through force or violence'). In 76 percent of those cases, a student was the victim of a fellow student's assault. The same is true nationwide. Consequently, the federal No Child Left Behind Act of 2001 requires each state to implement a statewide 'unsafe school choice policy'--a policy enacted by the Michigan State Board of Education in April 2003--that enables any student who is a victim of a violent criminal offense while at school to transfer to another school.

In addition to incidents of physical assault, 19.1 percent of students expelled used or distributed drugs, and 16.4 percent used dangerous weapons or firearms. Other causes of expulsion included (in descending order of occurrence) other behavior, verbal assault, disrupting the educational process, threatening a bomb explosion, carrying a handgun, aggravated assault, sexual harassment, and larceny or theft. See [Background Information](#).

Children as young as four years of age are expelled from school. According to the Foundation for Child Development, "Michigan's pre-kindergarten expulsion rate ranks fifth lowest among the 40 states that fund pre-kindergarten, with a rate of 2.4 expulsions per 1,000 enrolled"---that is to say "for every 417 pre-kindergarten students in Michigan, one is expelled."

Although the Michigan Association of School Boards issued a 'suspension and expulsion guidebook' in 2003 (See Background Information), the Revised School Code provides each school board with the authority to establish a local discipline policy, and there is a wide variety of protocols in place among Michigan's more than 550 school districts and 229 charter schools. Generally, expulsions follow from serious violations of a school's code of conduct--a document all school districts are required to distribute to students and their families. The imposition and length of expulsion depends on the severity of incident, a decision left to school administrators. However, expulsions of up to 180-days are mandatory for students guilty of physical assault against another student, and permanent expulsions are required for incidents that involve firearms or other dangerous weapons, physical assault against a school employee, arson, or criminal sexual misconduct. A student who is officially expelled is considered expelled from all public schools in the state, and their parents (or guardians) are responsible for obtaining alternative educational resources during the expulsion.

In many school districts, the decision to permanently expel a student rests with the locally elected board of education, following a recommendation from a school administrator. In some instances, school board members themselves, or school board members' children are among those involved in the school expulsion. For example, a recent proposed expulsion at Breckenridge High School involved a student bested in a fight who then wrote avenging death threats in his notebook about school board members and their children but never acted on them. In instances like these, school board members cannot be expected to remain objective in their deliberations.

Legislation has been introduced to ensure that students facing permanent expulsion are afforded due-process rights, and to prohibit school board members from voting to expel a student if they have conflicts of interest in the disciplinary matter at hand.

### ***THE CONTENT OF THE BILLS:***

House Bill 5411(H-1) would amend the Revised School Code (MCL 380.1312a) to require school district officials to provide students who face permanent expulsion with notice of their due process rights, and to develop policies to provide those rights.

The bill specifies that not later than the beginning of the 2008-2009 school year, the board of a school district (including the boards of intermediate school district and charter schools) must ensure that all of the following are included in the Code of Student Conduct:

- A detailed description of the due process rights that must be provided for a student or a student's parent (or legal guardian) in permanent expulsion proceedings.
- A detailed description of the school district's procedures for a permanent expulsion, including the process for reinstatement.

If board officials move to expel a student, they must provide a copy of their policies to the student and the student's parent or guardian, at the same time that notice of the charges is provided.

The bill specifies that this proposed section of the code would not diminish any rights under federal law of a student who had been determined to be eligible for special education programs and services.

House Bill 5411 is tie-barred to House Bill 5832, and the reverse, so that neither bill could go into effect unless both are enacted.

House Bill 5832 (H-1) would amend the Revised School Code (MCL 380.1312b) to require a school board member (including those serving on intermediate school district boards and charter school boards of directors) having a conflict of interest with regard to a student's expulsion, to abstain from voting on that expulsion.

### ***BACKGROUND INFORMATION:***

To read in its entirety the 27-page report entitled *School Safety Practices Report, 2001-2002 School Year*, published by the Center for Educational Performance and Information in February 2003, visit [http://www.michigan.gov/documents/Safety\\_Report\\_53422\\_7.pdf](http://www.michigan.gov/documents/Safety_Report_53422_7.pdf) - 2004-12-11

To review the 60-page *Guide to Suspensions & Expulsions in the Michigan Public Schools* (including Appendices having sample forms for disciplinary action, and a petition for school reinstatement), published jointly by the Michigan Association of Secondary School Principals and the Michigan Association of School Boards on April 17, 2003, visit [http://www.masb.org/pdf/suspensions\\_booklet.pdt](http://www.masb.org/pdf/suspensions_booklet.pdt) - 195k -View as html

### ***ARGUMENTS:***

#### ***For:***

In many school districts, the decision to permanently expel a student rests with the locally elected board of education, following a recommendation from a school administrator. In some instances, school board members themselves, or school board members' children are among those involved in the school expulsion. For example, a recent proposed expulsion at Breckenridge High School involved a student bested in a fight to uphold the rights of another, who later wrote avenging death threats about board members and their children in his notebook, never intending to act on them. In instances like these, school

board members cannot remain objective in their deliberations, and should be prohibited from voting to expel students if they have conflicts of interest in the disciplinary matters before them.

***For:***

This legislation is important public policy to protect the due-process rights of students who face permanent expulsion. (Upwards of 1,500 students in more than a third of the school districts across Michigan--about one-tenth of one percent of the school students in Michigan--experienced some kind of expulsion in the 2001-2002 school year.) Under Michigan law, a full-year (180-day) expulsion is mandatory if a student is guilty of physical assault against another student. Further, permanent expulsion is required under Michigan law for several serious behavioral offences: incidents that involve firearms or other dangerous weapons, physical assault against a school employee, arson, or criminal sexual misconduct. Finally, a student who is officially expelled is considered expelled from *all* public schools in the state, and their parents (or guardians) are responsible for obtaining alternative educational resources during the expulsion.

Expulsion from public school is, then, a serious and sobering event, one likely to alter the life-chances and life-choices of those school officials move to expel. In *Gross v. Lopez*, 419 US 565 (1975), the U. S. Supreme Court recognized that fact, ruling that schools must "recognize a student's legitimate entitlement to public education as a property (and liberty) interest protected by the due process clause." Ever since, school officials may not penalize a student for misconduct without "fundamentally fair procedures to determine whether misconduct has occurred." Among those fundamental rights is procedural due process (found in the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution). These bills help make those rights explicit and ever-available to those student who face expulsion.

Due process rights are not now uniformly guaranteed. Currently, a welter of local school board expulsion policies offers differing degrees of due-process protection. According to committee testimony from the American Civil Liberties Union, some students exercise their right to counsel, and then receive detailed explanations of the charges they face, copies of the evidence, the names of their accusers, and an opportunity to cross-examine those who charge them. In other school districts, those facing expulsion are given far less information, and the "fair procedure" extended to them may be limited to a single form on which a parent writes the student's version of events.

***Against:***

These bills are voluntary; they leave both *the extent of the due-process protection* afforded to students, and the consistent *exercise of conflict of interest* policies up to officials in local school districts. Instead, the due process protections affirmed by the State of Michigan in the instance of permanent school expulsion should be more systematic, reliable, and uniform. According to a spokesperson from the Michigan chapter of the American Civil Liberties Union, there is, nationwide, a significant disparity in the rates of suspension and expulsion between white students and students of color. Generally, investigations show that students of color are more likely to be expelled

for less serious offences (e.g. loudness, loitering) than their white peers. There is, then, a clear need for minimal standards that ensure "fair procedure" for everyone. This bill is but a first step in what must be a longer walk to address a serious matter of injustice, ensuring the protection of the rights of all students.

***POSITIONS:***

The Michigan Department of Education supports the bills. (4-15-08)

The Michigan Education Association supports the bills. (4-15-08)

The American Federal of Teachers - Michigan supports the bills. (4-15-08)

The Michigan Association of School Boards supports the bills. (4-15-08)

The American Civil Liberties Union of Michigan supports the bills. (4-15-08)

The Michigan Association of Secondary School Principals supports the bills. (4-15-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.