

# HOUSE BILL NO. 5299

September 14, 2021, Introduced by Reps. Brabec, Camilleri, Aiyash and Cavanagh and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
by amending section 1310d (MCL 380.1310d), as added by 2016 PA 360.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1310d. (1) Before suspending or expelling a pupil under  
2       section 1310, 1311(1), 1311(2), or 1311a, the board of a school  
3       district or intermediate school district or board of directors of a  
4       public school academy, or a superintendent, school principal, or  
5       other designee under section 1311(1), ~~shall~~**must** consider each of

1 the following factors:

2 (a) The pupil's age.

3 (b) The pupil's disciplinary history.

4 (c) Whether the pupil is a student with a disability.

5 (d) The seriousness of the violation or behavior committed by  
6 the pupil.

7 (e) Whether the violation or behavior committed by the pupil  
8 threatened the safety of any pupil or staff member.

9 (f) Whether restorative practices will be used to address the  
10 violation or behavior committed by the pupil.

11 (g) Whether a lesser intervention would properly address the  
12 violation or behavior committed by the pupil.

13 **(h) Whether the pupil is currently or has been a homeless**  
14 **child or youth, and, if so, both of the following:**

15 **(i) Whether the behavior is related to the pupil's temporary**  
16 **living status, if applicable.**

17 **(ii) Whether removal would create a barrier to the enrollment**  
18 **and retention of the pupil.**

19 **(i) Any other relevant factors, including, but not limited to,**  
20 **any adverse childhood experiences, history of trauma, or toxic**  
21 **stress experienced by the pupil and whether a trauma-responsive**  
22 **behavior plan would properly address the violation or behavior**  
23 **committed by the pupil.**

24 **(2) Except as provided in subsection (3), and subject to**  
25 **subsection (5), this section applies to give the board of a school**  
26 **district or intermediate school district or board of directors of a**  
27 **public school academy, or its designee, discretion over whether or**  
28 **not to suspend or expel a pupil under section 1310, 1311(1),**  
29 **1311(2), or 1311a. ~~In exercising this discretion with regard to~~ For**

1 a suspension of more than 10 days or an expulsion, there is a  
 2 rebuttable presumption that ~~a~~**the** suspension or expulsion is not  
 3 justified unless the board or board of directors, or its designee,  
 4 can demonstrate that it considered each of the factors listed under  
 5 subsection (1) **and held a hearing as required under subsection (5)**.  
 6 For a suspension of 10 or fewer days, there is no rebuttable  
 7 presumption, but the board or board of directors, or its designee,  
 8 ~~shall~~**must** consider each of the factors listed under subsection  
 9 (1).

10 (3) This section does not apply to a pupil being expelled  
 11 under section 1311(2) for possessing a firearm in a weapon free  
 12 school zone.

13 (4) Except as provided in subsection (3), consideration of the  
 14 factors listed in subsection (1) is mandatory before suspending or  
 15 expelling a ~~student~~**pupil** under section 1310, 1311(1), 1311(2), or  
 16 1311a. ~~The~~**Subject to subsection (5), the** method used for  
 17 consideration of the factors is at the sole discretion of the board  
 18 of a school district or intermediate school district or board of  
 19 directors of a public school academy, or its designee.

20 (5) **Except as otherwise provided in subsection (3), for the**  
 21 **suspension of a pupil for more than 10 days, the alternative**  
 22 **placement of a pupil for more than 10 days, or an expulsion, the**  
 23 **board of a school district or intermediate school district or board**  
 24 **of directors of a public school academy, or its designee, must do**  
 25 **both of the following:**

26 (a) **Hold a hearing that complies with the requirements of**  
 27 **section 1310e no later than 10 school days after the beginning of**  
 28 **the removal or suspension, alternative placement described in this**  
 29 **subsection, or expulsion, unless the pupil or the pupil's parent or**

1 legal guardian has agreed to or requested a delay. The hearing must  
2 not proceed if the pupil or the pupil's parent or legal guardian  
3 has agreed to or requested a delay.

4 (b) Not less than 5 days before the hearing described in  
5 subdivision (a), give notice, subject to state and federal privacy  
6 laws, by telephone and by mail or email to the pupil and the  
7 pupil's parent or legal guardian of all of the following:

8 (i) The specific disciplinary complaint against the pupil,  
9 including a complete written description of the incident leading to  
10 removal.

11 (ii) The time, date, and place of the hearing described in  
12 subdivision (a).

13 (iii) The justification for the disciplinary decision.

14 (iv) A summary of the evidence that will be presented against  
15 the pupil.

16 (v) A copy of all documents and evidence relevant to the  
17 incident, including, but not limited to, witness statements.

18 (vi) A copy of all materials reviewed in investigating the  
19 incident, including, but not limited to, video recordings.

20 (vii) An explanation of the hearing procedures and the pupil's  
21 rights, including, but not limited to, the pupil's right to be  
22 represented by an attorney or a non-attorney advocate at the  
23 hearing described in subdivision (a).

24 (viii) A statement that it is possible under applicable law that  
25 any testimony the pupil gives in the presence of law enforcement  
26 officers may be used against the pupil in a court of law at a  
27 future date.

28 (ix) Notice that the pupil, or the pupil's parent, legal  
29 guardian, or representative described in subparagraph (vii), may

1 request a closed hearing without the presence of the public, law  
2 enforcement officers, or security guards except as necessary for  
3 the safety of the participants in the hearing.

4 (x) All of the following, which do not preclude a school  
5 district, intermediate school district, or public school academy  
6 from providing available and appropriate educational services  
7 immediately upon the removal of the pupil:

8 (A) Access to missed assignments and exams that were assigned  
9 or occurred as of the date of the removal of the pupil and  
10 information on how the pupil may, as applicable, submit those  
11 assignments and exams for credit.

12 (B) Information concerning access to available and appropriate  
13 services for the pupil before the hearing date, including, but not  
14 limited to, at least all of the following:

15 (I) Any applicable plans in place for excusing assignments, as  
16 needed.

17 (II) Information concerning how the pupil may access upcoming  
18 assignments and instructional materials.

19 (III) Information concerning how the pupil may access in-  
20 person or virtual tutoring, instructors, home or community-based  
21 instruction, alternative instruction or testing opportunities,  
22 transportation, social work support, and support from a homeless or  
23 foster care liaison, as available.

24 (6) A copy of a document provided under subsection (5) may be  
25 redacted, if necessary, to protect pupil privacy.

26 (7) ~~(5)~~—As used in this section:

27 (a) "Adverse childhood experiences" means potentially  
28 traumatic events that occur at birth or at any age before age 18,  
29 and include, but are not limited to:

1 (i) Experiencing violence, abuse, or neglect.

2 (ii) Witnessing violence in the home or community.

3 (iii) Having a family member attempt or die by suicide.

4 (iv) Aspects of a child's environment that can undermine his or  
5 her sense of safety, stability, and bonding, such as growing up in  
6 a household with substance-use problems, mental-health problems, or  
7 instability due to parental separation or household members being  
8 in jail or prison.

9 (b) ~~(a)~~—"Expel" means to exclude a pupil from school for  
10 disciplinary reasons for a period of 60 or more school days.

11 (c) ~~(b)~~—"Firearm" means that term as defined in section 1311.

12 (d) "Homeless child or youth" means a child or youth who meets  
13 the definition of homeless children or youth as that term is  
14 defined in 42 USC 11434a.

15 (e) ~~(c)~~—"Suspend" means to exclude a pupil from school for  
16 disciplinary reasons for a period of fewer than 60 school days.

17 (f) "Toxic stress" means responses that can occur when a child  
18 experiences strong, frequent, or prolonged adversity, such as  
19 physical or emotional abuse, chronic neglect, caregiver substance  
20 abuse or mental illness, exposure to violence, or the accumulated  
21 burdens of family economic hardship without adequate adult support,  
22 that, if prolonged, can disrupt the development of the brain's  
23 architecture and other organ systems and increase the risk for  
24 stress-related diseases and cognitive impairment into adulthood.

25 (g) "Trauma" is a frightening, dangerous, or violent event  
26 that poses a threat to a child's life or bodily integrity,  
27 including, but not limited to, physical, sexual, or psychological  
28 abuse and neglect, including, but not limited to, trafficking;  
29 natural and technological disasters or terrorism; family or

1 community violence; sudden or violent loss of a loved one; personal  
2 or familial substance-use disorder; refugee and war experiences,  
3 including, but not limited to, torture; serious accidents or life-  
4 threatening illness or military family-related stressors,  
5 including, but not limited to, military deployment or the loss or  
6 injury of a parent or legal guardian. Trauma may solicit reactions  
7 that are influenced by the severity of the trauma, proximity to the  
8 trauma, caregivers' reactions to the trauma, a prior history of  
9 trauma, and family and community factors.

10 (h) ~~(d)~~ "Weapon free school zone" means that term as defined  
11 in section 1311.

12 Enacting section 1. This amendatory act does not take effect  
13 unless Senate Bill No. \_\_\_\_ or House Bill No. 5297 of the 101st  
14 Legislature is enacted into law.