

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, and by adding section 1311b.

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 a pupil possesses ~~in a weapon free school zone~~ AT
10 SCHOOL a weapon that constitutes a dangerous weapon, commits
11 arson ~~in a school building or on school grounds~~ AT SCHOOL, or
12 commits criminal sexual conduct ~~in a school building or on~~
13 ~~school grounds~~ AT SCHOOL, the school board, or the designee of
14 the school board as described in subsection (1) on behalf of the
15 school board, shall expel the pupil ~~from the school district~~
16 permanently, subject to possible reinstatement under subsection
17 (5), FROM ANY EDUCATIONAL PLACEMENT IN THE SCHOOL DISTRICT OTHER
18 THAN A DISCIPLINARY EDUCATION PROGRAM. However, a school board
19 is not required to expel a pupil for possessing a weapon if the
20 pupil establishes in a clear and convincing manner at least 1 of
21 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~~ FOR A DISCIPLINARY EDUCATION
15 PROGRAM UNDER SECTION 1311B, AN individual expelled pursuant to
16 subsection (2) is expelled from all public schools in this state
17 and the officials of a school district shall not allow the indi-
18 vidual to enroll in the school district IN A PROGRAM OTHER THAN A
19 DISCIPLINARY EDUCATION PROGRAM unless the individual has been
20 reinstated under subsection (5). THE PUPIL SHALL BE PLACED IN AN
21 APPROPRIATE DISCIPLINARY EDUCATION PROGRAM AS PROVIDED UNDER SUB-
22 SECTION (4) AND SECTION 1311B. Except as otherwise provided by
23 law, a program operated for individuals expelled pursuant to
24 subsection (2) shall ensure that those individuals are physically
25 separated at all times during the school day from the general
26 pupil population. If an individual expelled from a school
27 district pursuant to subsection (2) is not placed in ~~an~~

1 ~~alternative~~ A DISCIPLINARY education program, the school
2 district ~~may~~ SHALL provide, or ~~may~~ SHALL arrange for the
3 intermediate school district to provide, appropriate instruc-
4 tional services to the individual at home. The type of services
5 provided AT HOME shall be similar to those provided to homebound
6 or hospitalized pupils under section 109 of the state school aid
7 act of 1979, ~~being section 388.1709 of the Michigan Compiled~~
8 ~~Laws~~ MCL 388.1709, and the services may be contracted for in the
9 same manner as under that section. ~~This subsection does not~~
10 ~~require a school district to expend more money for providing~~
11 ~~services for a pupil expelled pursuant to subsection (2) than the~~
12 ~~amount of the foundation allowance the school district receives~~
13 ~~for the pupil under section 20 of the state school aid act of~~
14 ~~1979, being section 388.1620 of the Michigan Compiled Laws.~~

15 (4) If a school board expels an individual pursuant to sub-
16 section (2), the school board shall ensure that, within 3 days
17 after the expulsion, an official of the school district refers
18 the individual to the appropriate ~~county department of social~~
19 ~~services or~~ county community mental health agency OR OTHER
20 APPROPRIATE HUMAN SERVICES AGENCY and notifies the individual's
21 parent or legal guardian or, if the individual is at least age 18
22 or is an emancipated minor, notifies the individual of the
23 referral. THE SCHOOL BOARD ALSO SHALL REFER THE PUPIL FOR PLACE-
24 MENT IN A DISCIPLINARY EDUCATION PROGRAM UNDER SECTION 1311B.

25 (5) The parent or legal guardian of an individual expelled
26 pursuant to subsection (2) or, if the individual is at least age
27 18 or is an emancipated minor, the individual may petition the

1 expelling school board for reinstatement of the individual to
2 ~~public education~~ AN EDUCATIONAL PLACEMENT in the school dis-
3 trict OTHER THAN DISCIPLINARY EDUCATION. If the expelling school
4 board denies a petition for reinstatement, the parent or legal
5 guardian or, if the individual is at least age 18 or is an eman-
6 cipated minor, the individual may petition another school board
7 for reinstatement of the individual TO AN EDUCATION PROGRAM in
8 that other school district OTHER THAN DISCIPLINARY EDUCATION.
9 All of the following apply to reinstatement under this
10 subsection:

11 (a) For an individual who was enrolled in grade 5 or below
12 at the time of the expulsion and who has been expelled for pos-
13 sessing a firearm or threatening another person with a dangerous
14 weapon, the parent or legal guardian or, if the individual is at
15 least age 18 or is an emancipated minor, the individual may ini-
16 tiate a petition for reinstatement at any time after the expira-
17 tion of 60 school days after the date of expulsion. For an indi-
18 vidual who was enrolled in grade 5 or below at the time of the
19 expulsion and who has been expelled pursuant to subsection (2)
20 for a reason other than possessing a firearm or threatening
21 another person with a dangerous weapon, the parent or legal
22 guardian or, if the individual is at least age 18 or is an eman-
23 cipated minor, the individual may initiate a petition for rein-
24 statement at any time. For an individual who was in grade 6 or
25 above at the time of expulsion, the parent or legal guardian or,
26 if the individual is at least age 18 or is an emancipated minor,
27 the individual may initiate a petition for reinstatement at any

1 time after the expiration of 150 school days after the date of
2 expulsion.

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

15 (c) It is the responsibility of the parent or legal guardian
16 or, if the individual is at least age 18 or is an emancipated
17 minor, of the individual to prepare and submit the petition. A
18 school board is not required to provide any assistance in prepar-
19 ing the petition. Upon request by a parent or legal guardian or,
20 if the individual is at least age 18 or is an emancipated minor,
21 by the individual, a school board shall make available a form for
22 a petition.

23 (d) Not later than 10 school days after receiving a petition
24 for reinstatement under this subsection, a school board shall
25 appoint a committee to review the petition and any supporting
26 information submitted by the parent or legal guardian or, if the
27 individual is at least age 18 or is an emancipated minor, by the

1 individual. The committee shall consist of 2 school board
2 members, 1 school administrator, 1 teacher, and 1 parent of a
3 pupil in the school district. During this time the superinten-
4 dent of the school district ~~may~~ OR HIS OR HER DESIGNEE SHALL
5 prepare and submit for consideration by the committee information
6 concerning the circumstances of the expulsion and any factors
7 mitigating for or against reinstatement.

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

19 (i) The extent to which reinstatement of the individual TO
20 AN EDUCATIONAL PLACEMENT OTHER THAN DISCIPLINARY EDUCATION would
21 create a risk of harm to pupils or school personnel.

22 (ii) The extent to which reinstatement of the individual TO
23 AN EDUCATIONAL PLACEMENT OTHER THAN DISCIPLINARY EDUCATION would
24 create a risk of school district or individual liability for the
25 school board or school district personnel.

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

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

3 (v) The individual's attitude concerning the incident that
4 caused the expulsion.

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

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

12 (f) Not later than the next regularly scheduled board meet-
13 ing after receiving the recommendation of the committee under
14 subdivision (e), a school board shall make a decision to uncondi-
15 tionally reinstate the individual, conditionally reinstate the
16 individual, or deny reinstatement of the individual. The deci-
17 sion of the school board is final.

18 (g) A school board may require an individual and, if the
19 petition was filed by a parent or legal guardian, his or her
20 parent or legal guardian to agree in writing to specific condi-
21 tions before reinstating the individual in a conditional
22 reinstatement. The conditions SHALL INCLUDE SPECIFIC REQUIRE-
23 MENTS FOR PARENTAL INVOLVEMENT AND may include, but are not
24 limited to, agreement to a behavior contract, which may involve
25 the individual, parent or legal guardian, and an outside agency;
26 participation in or completion of an anger management program or
27 other appropriate counseling; periodic progress reviews; and

1 specified immediate consequences for failure to abide by a
2 condition. A parent or legal guardian or, if the individual is
3 at least age 18 or is an emancipated minor, the individual may
4 include proposed conditions in a petition for reinstatement sub-
5 mitted under this subsection.

6 (6) A school board or school administrator that complies [
7] with subsection (2) is not liable for damages for
8 expelling a pupil pursuant to subsection (2), and the authorizing
9 body of a public school academy established under part 6a ~~or~~
10 ~~part 6b~~ is not liable for damages for expulsion of a pupil [
11] by the public school academy pursuant to subsection
12 (2).

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

16 (8) THE BOARD OF A SCHOOL DISTRICT SHALL USE THE
17 LOCALLY-ADOPTED DUE PROCESS POLICY REQUIRED UNDER SECTION 1310 IN
18 EXPULSION PROCEEDINGS UNDER THIS SECTION. THE STATE BOARD SHALL
19 DEVELOP AND DISTRIBUTE TO SCHOOL DISTRICTS A MODEL DUE PROCESS
20 POLICY THAT SCHOOL DISTRICTS MAY ADOPT FOR USE IN REINSTATEMENT
21 PROCEEDINGS UNDER THIS SECTION AND SIMILAR PROCEEDINGS.

22 (9) ~~(8)~~ Subsections (2) to ~~(7)~~ (8) do not diminish the
23 due process rights under federal law of a pupil who has been
24 determined to be eligible for special education programs and
25 services.

26 ~~(9) If a pupil expelled from a public school district~~
27 ~~pursuant to subsection (2) is enrolled by a public school~~

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

7 (10) IF THE ACT IS AN INCIDENT THAT REQUIRES REPORTING TO
8 LAW ENFORCEMENT ACCORDING TO THE MEMORANDUM OF UNDERSTANDING
9 REQUIRED UNDER SECTION 1308, THE SCHOOL BOARD OR ITS DESIGNEE
10 SHALL REPORT AN ACT DESCRIBED IN SUBSECTION (2) TO APPROPRIATE
11 STATE OR LOCAL LAW ENFORCEMENT OFFICIALS ACCORDING TO THE MEMO-
12 RANDUM OF UNDERSTANDING.

13 (11) ~~(10)~~ As used in this section:

14 (a) "Arson" means a felony violation of chapter X of the
15 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
16 ~~being sections 750.71 to 750.80 of the Michigan Compiled Laws~~
17 1931 PA 328, MCL 750.71 TO 750.80.

18 (b) "AT SCHOOL" MEANS IN A CLASSROOM, ELSEWHERE ON SCHOOL
19 PREMISES, ON A SCHOOL BUS OR OTHER SCHOOL-RELATED VEHICLE, OR AT
20 A SCHOOL-SPONSORED ACTIVITY OR EVENT WHETHER OR NOT IT IS HELD ON
21 SCHOOL PREMISES.

22 (c) ~~(b)~~ "Criminal sexual conduct" means a violation of
23 section 520b, 520c, 520d, 520e, or 520g of ~~Act No. 328 of the~~
24 ~~Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d,~~
25 ~~750.520e, and 750.520g of the Michigan Compiled Laws~~ THE
26 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,
27 750.520D, 750.520E, AND 750.520G.

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1 (D) ~~-(c)-~~ "Dangerous weapon" means that term as defined in
2 section 1313.

3 (E) ~~-(d)-~~ "Firearm" means that term as defined in ~~the fed-~~
4 ~~eral gun-free schools act of 1994, Public Law 103-227, 20~~
5 ~~U.S.C. 3351~~ SECTION 921 OF TITLE 18 OF THE UNITED STATES CODE,
6 18 U.S.C. 921.

7 (F) ~~-(e)-~~ "School board" means a school board, intermediate
8 school board, or the board of directors of a public school acad-
9 emy established under part 6a. ~~or 6b.~~

10 (G) ~~-(f)-~~ "School district" means a school district, a local
11 act school district, an intermediate school district, or a public
12 school academy established under part 6a. ~~or 6b.~~

13 ~~-(g)- "Weapon free school zone" means that term as defined in~~
14 ~~section 237a of the Michigan penal code, Act No. 328 of the~~
15 ~~Public Acts of 1931, being section 750.237a of the Michigan~~
16 ~~Compiled Laws.~~

17 SEC. 1311B. (1) A SCHOOL BOARD SHALL ENSURE THAT ALL PUPILS
18 WHO ARE EXPELLED FROM THE SCHOOL DISTRICT UNDER SECTION 1311 OR
19 1311A ARE PROVIDED WITH AN APPROPRIATE DISCIPLINARY EDUCATION
20 PROGRAM. A SCHOOL BOARD MAY ALSO PLACE DISRUPTIVE PUPILS IN THE
21 DISCIPLINARY EDUCATION PROGRAM. A SCHOOL BOARD MAY PROVIDE THE
22 DISCIPLINARY EDUCATION PROGRAM DIRECTLY, MAY PROVIDE THE PROGRAM
23 IN A CONSORTIUM OR OTHER COOPERATIVE ARRANGEMENT WITH 1 OR MORE
24 OTHER SCHOOL DISTRICTS, OR MAY PARTICIPATE IN A DISCIPLINARY EDU-
25 CATION PROGRAM CONDUCTED BY 1 OR MORE INTERMEDIATE SCHOOL
26 DISTRICTS.

1 (2) ALL OF THE FOLLOWING APPLY TO A DISCIPLINARY EDUCATION
2 PROGRAM OPERATED PURSUANT TO THIS SECTION:

3 (A) THE PROGRAM SHALL BE PROVIDED IN A SETTING OTHER THAN
4 THE CLASSROOM THAT WOULD BE THE PUPIL'S REGULAR CLASSROOM IF THE
5 PUPIL HAD NOT BEEN PLACED IN THE DISCIPLINARY EDUCATION PROGRAM.

6 (B) THE PROGRAM MAY BE LOCATED ON OR OFF A REGULAR SCHOOL
7 CAMPUS.

8 (C) THE PROGRAM SHALL BE IN A SETTING THAT ENSURES THAT THE
9 PUPILS ARE PHYSICALLY SEPARATED AT ALL TIMES DURING THE SCHOOL
10 DAY FROM THE GENERAL PUPIL POPULATION. THE PROGRAM MAY INCLUDE
11 PUPILS EXPELLED UNDER SECTION 1311(2), PUPILS EXPELLED UNDER
12 SECTION 1311A, AND OTHER PUPILS PLACED IN THE PROGRAM, OR ANY
13 COMBINATION OF THESE, TOGETHER IN THE SAME EDUCATIONAL AND PHYSI-
14 CAL SETTING.

15 (D) THE PROGRAM SHALL PROVIDE FOR BOTH THE ACADEMIC AND
16 BEHAVIOR MANAGEMENT NEEDS OF THE PUPIL IN A STRUCTURED, CON-
17 TROLLED ENVIRONMENT.

18 (E) TO THE GREATEST EXTENT PRACTICABLE, THE PROGRAM SHALL
19 INVOLVE LOCAL MENTAL HEALTH, SOCIAL SERVICES, COMMUNITY HEALTH,
20 AND OTHER SUPPORTIVE AGENCIES IN A COLLABORATIVE APPROACH FOR
21 REFERRAL, TREATMENT, AND ASSISTANCE IN MEETING THE NEEDS OF THE
22 PUPIL.

23 (F) THE PROGRAM SHALL INVOLVE A PUPIL'S PARENT OR LEGAL
24 GUARDIAN IN AN ONGOING FASHION.

25 (G) A PUPIL PLACED IN THE PROGRAM IS REQUIRED TO ATTEND
26 SCHOOL IN THE PROGRAM AND IS SUBJECT TO THE COMPULSORY SCHOOL

1 ATTENDANCE PROVISIONS OF PART 24 IF HE OR SHE FAILS TO ATTEND THE
2 PROGRAM.

3 (3) A SCHOOL DISTRICT SHALL COOPERATE WITH OTHER GOVERNMENTAL AGENCIES AND COMMUNITY ORGANIZATIONS THAT ARE PROVIDING SERVICES TO A PUPIL WHO IS PLACED IN A DISCIPLINARY EDUCATION PROGRAM.

7 (4) THIS STATE SHALL APPROPRIATE SUFFICIENT FUNDS EACH YEAR TO FULLY FUND DISCIPLINARY EDUCATION PROGRAMS UNDER THIS SECTION.

10 (5) UPON REQUEST FROM A CONSTITUENT SCHOOL DISTRICT, AN INTERMEDIATE SCHOOL DISTRICT SHALL DO 1 OR MORE OF THE FOLLOWING:

13 (A) COORDINATE AND ASSIST THE SCHOOL DISTRICT'S PARTICIPATION IN OR PROVIDING OF A DISCIPLINARY EDUCATION PROGRAM UNDER THIS SECTION.

16 (B) PROVIDE TECHNICAL ASSISTANCE TO THE SCHOOL DISTRICT IN DEVELOPING THE SCHOOL DISTRICT'S OWN DISCIPLINARY EDUCATION PROGRAM UNDER THIS SECTION.

19 (6) AS USED IN THIS SECTION:

20 (A) "DISRUPTIVE PUPIL" MEANS A PUPIL WHO CONSISTENTLY ENGAGES IN DISRUPTIVE BEHAVIOR AND WHOSE BEHAVIOR MEETS 1 OR MORE OF THE FOLLOWING:

23 (i) POSES A THREAT TO THE SAFETY AND WELFARE OF OTHER PUPILS, TEACHERS, AND OTHER SCHOOL PERSONNEL.

25 (ii) CREATES AN UNSAFE SCHOOL ENVIRONMENT.

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1 (*iii*) MATERIALLY INTERFERES WITH THE LEARNING OF OTHER
2 PUPILS OR DISRUPTS THE OVERALL EDUCATIONAL PROCESS, IN A
3 CONTINUING AND ONGOING FASHION.

4 (B) "SCHOOL BOARD" AND "SCHOOL DISTRICT" MEAN THOSE TERMS AS
5 DEFINED IN SECTION 1311.

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

9 (a) Senate Bill No. 313.

10 (b) House Bill No. 4075.

11 (c) House Bill No. 5478.

12 (d) House Bill No. 5482.

13 (e) House Bill No. 5696.

14 (f) House Bill No. 5699.

15 (g) House Bill No. 5700.