

HOUSE BILL No. 5424

December 9, 1997, Introduced by Reps. Mans, Voorhees, McBryde, Profit, Kaza, DeVuyst, Parks, Baade, Basham, Lowe, Harder, Cropsey, Goschka and Schermesser and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
(MCL 380.1 to 380.1852) by adding section 1311a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 1311A. (1) IF A PUPIL ENROLLED IN GRADE 6 OR ABOVE
2 COMMITS A PHYSICAL ASSAULT AT SCHOOL AGAINST A PERSON EMPLOYED BY
3 OR ENGAGED AS A VOLUNTEER OR CONTRACTOR BY THE SCHOOL BOARD AND
4 THE ASSAULT IS REPORTED TO THE SCHOOL BOARD BY THE VICTIM OR, IF
5 THE VICTIM IS UNABLE TO REPORT THE ASSAULT, BY ANOTHER PERSON ON
6 THE VICTIM'S BEHALF, THE SCHOOL BOARD, OR THE DESIGNEE OF THE
7 SCHOOL BOARD AS DESCRIBED IN SECTION 1311(1) ON BEHALF OF THE
8 SCHOOL BOARD, AFTER AFFORDING THE REQUIRED DUE PROCESS, SHALL
9 EXPEL THE PUPIL FROM THE SCHOOL DISTRICT PERMANENTLY, SUBJECT TO
10 POSSIBLE REINSTATEMENT UNDER SUBSECTION (4). IF A PUPIL ENROLLED
11 IN GRADE 6 OR ABOVE COMMITS A VERBAL ASSAULT AT SCHOOL AGAINST A

1 PERSON EMPLOYED BY OR ENGAGED AS A VOLUNTEER OR CONTRACTOR BY THE
2 SCHOOL BOARD AND THE ASSAULT IS REPORTED TO THE SCHOOL BOARD BY
3 THE VICTIM, THE SCHOOL BOARD, OR THE DESIGNEE OF THE SCHOOL BOARD
4 AS DESCRIBED IN SECTION 1311(1) ON BEHALF OF THE SCHOOL BOARD,
5 AFTER AFFORDING THE REQUIRED DUE PROCESS, SHALL SUSPEND THE PUPIL
6 FROM THE SCHOOL DISTRICT FOR 10 SCHOOL DAYS. HOWEVER, IF A
7 SCHOOL DISTRICT INCLUDES GRADE 6 IN ITS ELEMENTARY SCHOOLS SO
8 THAT THOSE SCHOOLS ARE OPERATED AS GRADE K-6 SCHOOLS, WITHIN THAT
9 SCHOOL DISTRICT THE REQUIREMENTS OF THIS SUBSECTION APPLY ONLY TO
10 PUPILS ENROLLED IN GRADE 7 OR ABOVE.

11 (2) IF AN INDIVIDUAL IS EXPELLED PURSUANT TO SUBSECTION (1),
12 THE EXPELLING SCHOOL DISTRICT SHALL ENTER ON THE INDIVIDUAL'S
13 PERMANENT RECORD THAT HE OR SHE HAS BEEN EXPELLED PURSUANT TO
14 THIS SECTION. EXCEPT IF A SCHOOL DISTRICT OPERATES OR PARTICI-
15 PATES COOPERATIVELY IN AN ALTERNATIVE EDUCATION PROGRAM APPROPRI-
16 ATE FOR INDIVIDUALS EXPELLED PURSUANT TO THIS SECTION OR SECTION
17 1311(2) AND IN ITS DISCRETION ADMITS THE INDIVIDUAL TO THAT PRO-
18 GRAM, AN INDIVIDUAL EXPELLED PURSUANT TO THIS SECTION IS EXPELLED
19 FROM ALL PUBLIC SCHOOLS IN THIS STATE AND THE OFFICIALS OF A
20 SCHOOL DISTRICT SHALL NOT ALLOW THE INDIVIDUAL TO ENROLL IN THE
21 SCHOOL DISTRICT UNLESS THE INDIVIDUAL HAS BEEN REINSTATED UNDER
22 SUBSECTION (4). EXCEPT AS OTHERWISE PROVIDED BY LAW, A PROGRAM
23 OPERATED FOR INDIVIDUALS EXPELLED PURSUANT TO THIS SECTION OR
24 SECTION 1311(2) SHALL ENSURE THAT THOSE INDIVIDUALS ARE PHYSI-
25 CALLY SEPARATED AT ALL TIMES DURING THE SCHOOL DAY FROM THE GEN-
26 ERAL PUPIL POPULATION. IF AN INDIVIDUAL EXPELLED FROM A SCHOOL
27 DISTRICT PURSUANT TO THIS SECTION IS NOT PLACED IN AN ALTERNATIVE

1 EDUCATION PROGRAM, THE SCHOOL DISTRICT MAY PROVIDE, OR MAY
2 ARRANGE FOR THE INTERMEDIATE SCHOOL DISTRICT TO PROVIDE, APPRO-
3 PRIATE INSTRUCTIONAL SERVICES TO THE INDIVIDUAL AT HOME. THE
4 TYPE OF SERVICES PROVIDED SHALL BE SIMILAR TO THOSE PROVIDED TO
5 HOMEBOUND OR HOSPITALIZED PUPILS UNDER SECTION 109 OF THE STATE
6 SCHOOL AID ACT OF 1979, MCL 388.1709, AND THE SERVICES MAY BE
7 CONTRACTED FOR IN THE SAME MANNER AS UNDER THAT SECTION. THIS
8 SUBSECTION DOES NOT REQUIRE A SCHOOL DISTRICT TO EXPEND MORE
9 MONEY FOR PROVIDING SERVICES FOR A PUPIL EXPELLED PURSUANT TO
10 THIS SECTION THAN THE AMOUNT OF THE FOUNDATION ALLOWANCE THE
11 SCHOOL DISTRICT RECEIVES FOR THE PUPIL UNDER SECTION 20 OF THE
12 STATE SCHOOL AID ACT OF 1979, MCL 388.1620.

13 (3) IF A SCHOOL BOARD EXPELS AN INDIVIDUAL PURSUANT TO THIS
14 SECTION, THE SCHOOL BOARD SHALL ENSURE THAT, WITHIN 3 DAYS AFTER
15 THE EXPULSION, AN OFFICIAL OF THE SCHOOL DISTRICT REFERS THE
16 INDIVIDUAL TO THE APPROPRIATE COUNTY DEPARTMENT OF SOCIAL SERV-
17 ICES OR COUNTY COMMUNITY MENTAL HEALTH AGENCY AND NOTIFIES THE
18 INDIVIDUAL'S PARENT OR LEGAL GUARDIAN OR, IF THE INDIVIDUAL IS AT
19 LEAST AGE 18 OR IS AN EMANCIPATED MINOR, NOTIFIES THE INDIVIDUAL
20 OF THE REFERRAL.

21 (4) THE PARENT OR LEGAL GUARDIAN OF AN INDIVIDUAL EXPELLED
22 PURSUANT TO THIS SECTION OR, IF THE INDIVIDUAL IS AT LEAST AGE 18
23 OR IS AN EMANCIPATED MINOR, THE INDIVIDUAL MAY PETITION THE
24 EXPELLING SCHOOL BOARD FOR REINSTATEMENT OF THE INDIVIDUAL TO
25 PUBLIC EDUCATION IN THE SCHOOL DISTRICT. IF THE EXPELLING SCHOOL
26 BOARD DENIES A PETITION FOR REINSTATEMENT, THE PARENT OR LEGAL
27 GUARDIAN OR, IF THE INDIVIDUAL IS AT LEAST AGE 18 OR IS AN

1 EMANCIPATED MINOR, THE INDIVIDUAL MAY PETITION ANOTHER SCHOOL
2 BOARD FOR REINSTATEMENT OF THE INDIVIDUAL IN THAT OTHER SCHOOL
3 DISTRICT. ALL OF THE FOLLOWING APPLY TO REINSTATEMENT UNDER THIS
4 SUBSECTION:

5 (A) THE INDIVIDUAL'S PARENT OR LEGAL GUARDIAN OR, IF THE
6 INDIVIDUAL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR, THE
7 INDIVIDUAL MAY INITIATE A PETITION FOR REINSTATEMENT AT ANY TIME
8 AFTER THE EXPIRATION OF 150 SCHOOL DAYS AFTER THE DATE OF
9 EXPULSION.

10 (B) THE INDIVIDUAL SHALL NOT BE REINSTATED BEFORE THE EXPI-
11 RATION OF A NUMBER OF SCHOOL DAYS AFTER THE DATE OF EXPULSION
12 EQUAL TO THE NUMBER OF DAYS OF PUPIL INSTRUCTION REQUIRED IN A
13 SCHOOL YEAR UNDER SECTION 1284.

14 (C) IT IS THE RESPONSIBILITY OF THE PARENT OR LEGAL GUARDIAN
15 OR, IF THE INDIVIDUAL IS AT LEAST AGE 18 OR IS AN EMANCIPATED
16 MINOR, OF THE INDIVIDUAL TO PREPARE AND SUBMIT THE PETITION. A
17 SCHOOL BOARD IS NOT REQUIRED TO PROVIDE ANY ASSISTANCE IN PREPAR-
18 ING THE PETITION. UPON REQUEST BY A PARENT OR LEGAL GUARDIAN OR,
19 IF THE INDIVIDUAL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR,
20 BY THE INDIVIDUAL, A SCHOOL BOARD SHALL MAKE AVAILABLE A FORM FOR
21 A PETITION.

22 (D) NOT LATER THAN 10 SCHOOL DAYS AFTER RECEIVING A PETITION
23 FOR REINSTATEMENT UNDER THIS SUBSECTION, A SCHOOL BOARD SHALL
24 APPOINT A COMMITTEE TO REVIEW THE PETITION AND ANY SUPPORTING
25 INFORMATION SUBMITTED BY THE PARENT OR LEGAL GUARDIAN OR, IF THE
26 INDIVIDUAL IS AT LEAST AGE 18 OR IS AN EMANCIPATED MINOR, BY THE
27 INDIVIDUAL. THE COMMITTEE SHALL CONSIST OF 2 SCHOOL BOARD

1 MEMBERS, 1 SCHOOL ADMINISTRATOR, 1 TEACHER, AND 1 PARENT OF A
2 PUPIL IN THE SCHOOL DISTRICT. DURING THIS TIME THE SUPERINTEN-
3 DENT OF THE SCHOOL DISTRICT MAY PREPARE AND SUBMIT FOR CONSIDERA-
4 TION BY THE COMMITTEE INFORMATION CONCERNING THE CIRCUMSTANCES OF
5 THE EXPULSION AND ANY FACTORS MITIGATING FOR OR AGAINST
6 REINSTATEMENT.

7 (E) NOT LATER THAN 10 SCHOOL DAYS AFTER ALL MEMBERS ARE
8 APPOINTED, THE COMMITTEE DESCRIBED IN SUBDIVISION (D) SHALL
9 REVIEW THE PETITION AND ANY SUPPORTING INFORMATION AND INFORMA-
10 TION PROVIDED BY THE SCHOOL DISTRICT AND SHALL SUBMIT A RECOMMEN-
11 DATION TO THE SCHOOL BOARD ON THE ISSUE OF REINSTATEMENT. THE
12 RECOMMENDATION SHALL BE FOR UNCONDITIONAL REINSTATEMENT, FOR CON-
13 DITIONAL REINSTATEMENT, OR AGAINST REINSTATEMENT, AND SHALL BE
14 ACCOMPANIED BY AN EXPLANATION OF THE REASONS FOR THE RECOMMENDA-
15 TION AND OF ANY RECOMMENDED CONDITIONS FOR REINSTATEMENT. THE
16 RECOMMENDATION SHALL BE BASED ON CONSIDERATION OF ALL OF THE FOL-
17 LOWING FACTORS:

18 (i) THE EXTENT TO WHICH REINSTATEMENT OF THE INDIVIDUAL
19 WOULD CREATE A RISK OF HARM TO PUPILS OR SCHOOL PERSONNEL.

20 (ii) THE EXTENT TO WHICH REINSTATEMENT OF THE INDIVIDUAL
21 WOULD CREATE A RISK OF SCHOOL DISTRICT OR INDIVIDUAL LIABILITY
22 FOR THE SCHOOL BOARD OR SCHOOL DISTRICT PERSONNEL.

23 (iii) THE AGE AND MATURITY OF THE INDIVIDUAL.

24 (iv) THE INDIVIDUAL'S SCHOOL RECORD BEFORE THE INCIDENT THAT
25 CAUSED THE EXPULSION.

26 (v) THE INDIVIDUAL'S ATTITUDE CONCERNING THE INCIDENT THAT
27 CAUSED THE EXPULSION.

1 (vi) THE INDIVIDUAL'S BEHAVIOR SINCE THE EXPULSION AND THE
2 PROSPECTS FOR REMEDIATION OF THE INDIVIDUAL.

3 (vii) IF THE PETITION WAS FILED BY A PARENT OR LEGAL GUARDI-
4 AN, THE DEGREE OF COOPERATION AND SUPPORT THAT HAS BEEN PROVIDED
5 BY THE PARENT OR LEGAL GUARDIAN AND THAT CAN BE EXPECTED IF THE
6 INDIVIDUAL IS REINSTATED, INCLUDING, BUT NOT LIMITED TO, RECEP-
7 TIVENESS TOWARD POSSIBLE CONDITIONS PLACED ON THE REINSTATEMENT.

8 (F) NOT LATER THAN THE NEXT REGULARLY SCHEDULED BOARD MEET-
9 ING AFTER RECEIVING THE RECOMMENDATION OF THE COMMITTEE UNDER
10 SUBDIVISION (E), A SCHOOL BOARD SHALL MAKE A DECISION TO UNCONDI-
11 TIONALLY REINSTATE THE INDIVIDUAL, CONDITIONALLY REINSTATE THE
12 INDIVIDUAL, OR DENY REINSTATEMENT OF THE INDIVIDUAL. THE DECI-
13 SION OF THE SCHOOL BOARD IS FINAL.

14 (G) A SCHOOL BOARD MAY REQUIRE AN INDIVIDUAL AND, IF THE
15 PETITION WAS FILED BY A PARENT OR LEGAL GUARDIAN, HIS OR HER
16 PARENT OR LEGAL GUARDIAN TO AGREE IN WRITING TO SPECIFIC CONDI-
17 TIONS BEFORE REINSTATING THE INDIVIDUAL IN A CONDITIONAL
18 REINSTATEMENT. THE CONDITIONS MAY INCLUDE, BUT ARE NOT LIMITED
19 TO, AGREEMENT TO A BEHAVIOR CONTRACT, WHICH MAY INVOLVE THE INDI-
20 VIDUAL, PARENT OR LEGAL GUARDIAN, AND AN OUTSIDE AGENCY; PARTICI-
21 PATION IN OR COMPLETION OF AN ANGER MANAGEMENT PROGRAM OR OTHER
22 APPROPRIATE COUNSELING; PERIODIC PROGRESS REVIEWS; AND SPECIFIED
23 IMMEDIATE CONSEQUENCES FOR FAILURE TO ABIDE BY A CONDITION. A
24 PARENT OR LEGAL GUARDIAN OR, IF THE INDIVIDUAL IS AT LEAST AGE 18
25 OR IS AN EMANCIPATED MINOR, THE INDIVIDUAL MAY INCLUDE PROPOSED
26 CONDITIONS IN A PETITION FOR REINSTATEMENT SUBMITTED UNDER THIS
27 SUBSECTION.

1 (5) A SCHOOL BOARD OR SCHOOL ADMINISTRATOR THAT COMPLIES
2 WITH THIS SECTION IS NOT LIABLE FOR DAMAGES FOR EXPELLING OR SUS-
3 PENDING A PUPIL PURSUANT TO THIS SECTION, AND THE AUTHORIZING
4 BODY OF A PUBLIC SCHOOL ACADEMY ESTABLISHED UNDER THIS ACT IS NOT
5 LIABLE FOR DAMAGES FOR EXPULSION OR SUSPENSION OF A PUPIL BY THE
6 PUBLIC SCHOOL ACADEMY PURSUANT TO THIS SECTION.

7 (6) THE DEPARTMENT SHALL DEVELOP AND DISTRIBUTE TO ALL
8 SCHOOL DISTRICTS A FORM FOR A PETITION TO BE USED UNDER SUBSEC-
9 TION (4). THE DEPARTMENT MAY DESIGNATE THE FORM USED FOR A PETI-
10 TION FOR REINSTATEMENT UNDER SECTION 1311 AS A FORM THAT MAY BE
11 USED UNDER THIS SUBSECTION.

12 (7) THE BOARD OF A SCHOOL DISTRICT SHALL USE A
13 LOCALLY-ADOPTED DUE PROCESS POLICY IN EXPULSION, SUSPENSION, AND
14 REINSTATEMENT PROCEEDINGS UNDER THIS SECTION. THE STATE BOARD
15 MAY DEVELOP AND DISTRIBUTE TO SCHOOL DISTRICTS A MODEL DUE PRO-
16 CESS POLICY THAT SCHOOL DISTRICTS MAY ADOPT FOR USE IN PROCEED-
17 INGS UNDER THIS SECTION AND SIMILAR PROCEEDINGS.

18 (8) THIS SECTION DOES NOT DIMINISH THE DUE PROCESS RIGHTS
19 UNDER FEDERAL LAW OF A PUPIL WHO HAS BEEN DETERMINED TO BE ELIGI-
20 BLE FOR SPECIAL EDUCATION PROGRAMS AND SERVICES.

21 (9) IF A PUPIL EXPELLED FROM A SCHOOL DISTRICT PURSUANT TO
22 THIS SECTION IS ENROLLED BY A PUBLIC SCHOOL SPONSORED ALTERNATIVE
23 EDUCATION PROGRAM OR A PUBLIC SCHOOL ACADEMY DURING THE PERIOD OF
24 EXPULSION, THE PUBLIC SCHOOL ACADEMY OR THE ALTERNATIVE EDUCATION
25 PROGRAM IS IMMEDIATELY ELIGIBLE FOR THE PRORATED SHARE OF EITHER
26 THE PUBLIC SCHOOL ACADEMY'S FOUNDATION ALLOWANCE OR THE EXPELLING
27 SCHOOL DISTRICT'S FOUNDATION ALLOWANCE, WHICHEVER IS HIGHER.

1 (10) AT LEAST ANNUALLY, EACH SCHOOL DISTRICT SHALL PREPARE
2 AND SUBMIT TO THE DEPARTMENT, IN THE FORM AND MANNER PRESCRIBED
3 BY THE DEPARTMENT, A REPORT STATING THE NUMBER OF PUPILS EXPELLED
4 OR SUSPENDED PURSUANT TO THIS SECTION DURING THE IMMEDIATELY PRE-
5 CEDING SCHOOL YEAR, WITH A BRIEF DESCRIPTION OF THE INCIDENT THAT
6 CAUSED EACH EXPULSION OR SUSPENSION.

7 (11) THE BOARD OF A SCHOOL DISTRICT OR ITS DESIGNEE AS
8 DESCRIBED IN SUBSECTION (1) SHALL REPORT ALL PHYSICAL ASSAULTS
9 DESCRIBED IN SUBSECTION (1) TO STATE OR LOCAL LAW ENFORCEMENT
10 OFFICIALS IN A TIMELY MANNER.

11 (12) AS USED IN THIS SECTION:

12 (A) "AT SCHOOL" MEANS ON PROPERTY OWNED BY OR UNDER THE CON-
13 TROL OF THE SCHOOL DISTRICT, ON A VEHICLE USED BY THE SCHOOL DIS-
14 TRICT OR UNDER CONTRACT WITH THE SCHOOL DISTRICT TO TRANSPORT
15 PUPILS TO OR FROM SCHOOL, OR AT A SCHOOL-RELATED ACTIVITY SPON-
16 SORED OR APPROVED BY THE SCHOOL DISTRICT.

17 (B) "PHYSICAL ASSAULT" MEANS INTENTIONALLY CAUSING OR
18 ATTEMPTING TO CAUSE PHYSICAL HARM TO ANOTHER THROUGH FORCE OR
19 VIOLENCE OR AN INTENTIONAL ACT OTHER THAN A VERBAL ASSAULT THAT
20 PLACES ANOTHER IN REASONABLE APPREHENSION OF BEING PHYSICALLY
21 HARMED THROUGH FORCE OR VIOLENCE.

22 (C) "SCHOOL BOARD" MEANS A SCHOOL BOARD, INTERMEDIATE SCHOOL
23 BOARD, OR THE BOARD OF DIRECTORS OF A PUBLIC SCHOOL ACADEMY
24 ESTABLISHED UNDER THIS ACT.

25 (D) "SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT, A LOCAL ACT
26 SCHOOL DISTRICT, AN INTERMEDIATE SCHOOL DISTRICT, OR A PUBLIC
27 SCHOOL ACADEMY ESTABLISHED UNDER THIS ACT.

1 (E) "VERBAL ASSAULT" MEANS INTENTIONALLY THREATENING THROUGH
2 SPOKEN OR WRITTEN WORDS TO CAUSE PHYSICAL HARM TO ANOTHER THROUGH
3 FORCE OR VIOLENCE, WITH THE APPARENT ABILITY TO CARRY OUT THAT
4 THREAT.