

HOUSE BILL No. 5526

December 14, 2005, Introduced by Rep. Caswell 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 1999 PA 23.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1311. (1) Subject to subsection (2), the school board, or
2 the school district superintendent, a school building principal, or
3 another school district official if designated by the school board,
4 may authorize or order the suspension or expulsion from school of a
5 pupil guilty of gross misdemeanor or persistent disobedience if, in
6 the judgment of the school board or its designee, as applicable,
7 the interest of the school is served by the authorization or order.
8 If there is reasonable cause to believe that the pupil is
9 handicapped, and the school district has not evaluated the pupil in
10 accordance with rules of the state board to determine if the

1 student is handicapped, the pupil shall be evaluated immediately by
2 the intermediate school district of which the school district is
3 constituent in accordance with section 1711.

4 (2) If a pupil possesses in a weapon free school zone a weapon
5 that constitutes a dangerous weapon, commits arson in a school
6 building or on school grounds, ~~or~~ commits criminal sexual conduct
7 in a school building or on school grounds, **OR FALSELY ACCUSES A**
8 **SCHOOL EMPLOYEE OR CONTRACTOR OF CRIMINAL SEXUAL CONDUCT**, the
9 school board, or the designee of the school board as described in
10 subsection (1) on behalf of the school board, shall expel the pupil
11 from the school district permanently, subject to possible
12 reinstatement under subsection (5). However, a school board is not
13 required to expel a pupil for possessing a weapon if the pupil
14 establishes in a clear and convincing manner at least 1 of the
15 following:

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

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

20 (c) The pupil did not know or have reason to know that the
21 object or instrument possessed by the pupil constituted a dangerous
22 weapon.

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

26 (3) If an individual is expelled pursuant to subsection (2),
27 the expelling school district shall enter on the individual's

1 permanent record that he or she has been expelled pursuant to
2 subsection (2). Except if a school district operates or
3 participates cooperatively in an alternative education program
4 appropriate for individuals expelled pursuant to subsection (2) and
5 in its discretion admits the individual to that program, and except
6 for a strict discipline academy established under sections 1311b to
7 1311l, an individual expelled pursuant to subsection (2) is expelled
8 from all public schools in this state and the officials of a school
9 district shall not allow the individual to enroll in the school
10 district unless the individual has been reinstated under subsection
11 (5). Except as otherwise provided by law, a program operated for
12 individuals expelled pursuant to subsection (2) shall ensure that
13 those individuals are physically separated at all times during the
14 school day from the general pupil population. If an individual
15 expelled from a school district pursuant to subsection (2) is not
16 placed in an alternative education program or strict discipline
17 academy, the school district may provide, or may arrange for the
18 intermediate school district to provide, appropriate instructional
19 services to the individual at home. The type of services provided
20 shall meet the requirements of section ~~6(4)(v)~~ **6(4)(U)** of the
21 state school aid act of 1979, MCL 388.1606, and the services may be
22 contracted for in the same manner as services for homebound pupils
23 under section 109 of the state school aid act of 1979, MCL
24 388.1709. This subsection does not require a school district to
25 expend more money for providing services for a pupil expelled
26 pursuant to subsection (2) than the amount of the foundation
27 allowance the school district receives for the pupil **AS CALCULATED**

1 under section 20 of the state school aid act of 1979, MCL 388.1620.

2 (4) If a school board expels an individual pursuant to
3 subsection (2), the school board shall ensure that, within 3 days
4 after the expulsion, an official of the school district refers the
5 individual to the appropriate county department of social services
6 or county community mental health agency and notifies the
7 individual's parent or legal guardian or, if the individual is at
8 least age 18 or is an emancipated minor, notifies the individual of
9 the referral.

10 (5) The parent or legal guardian of an individual expelled
11 pursuant to subsection (2) or, if the individual is at least age 18
12 or is an emancipated minor, the individual may petition the
13 expelling school board for reinstatement of the individual to
14 public education in the school district. If the expelling school
15 board denies a petition for reinstatement, the parent or legal
16 guardian or, if the individual is at least age 18 or is an
17 emancipated minor, the individual may petition another school board
18 for reinstatement of the individual in that other school district.
19 All of the following apply to reinstatement under this subsection:

20 (a) For an individual who was enrolled in grade 5 or below at
21 the time of the expulsion and who has been expelled for possessing
22 a firearm or threatening another person with a dangerous weapon,
23 the parent or legal guardian or, if the individual is at least age
24 18 or is an emancipated minor, the individual may initiate a
25 petition for reinstatement at any time after the expiration of 60
26 school days after the date of expulsion. For an individual who was
27 enrolled in grade 5 or below at the time of the expulsion and who

1 has been expelled pursuant to subsection (2) for a reason other
2 than possessing a firearm or threatening another person with a
3 dangerous weapon, the parent or legal guardian or, if the
4 individual is at least age 18 or is an emancipated minor, the
5 individual may initiate a petition for reinstatement at any time.
6 For an individual who was in grade 6 or above at the time of
7 expulsion, the parent or legal guardian or, if the individual is at
8 least age 18 or is an emancipated minor, the individual may
9 initiate a petition for reinstatement at any time after the
10 expiration of 150 school days after the date of expulsion.

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

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

1 individual is at least age 18 or is an emancipated minor, by the
2 individual, a school board shall make available a form for a
3 petition.

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

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

26 (i) The extent to which reinstatement of the individual would
27 create a risk of harm to pupils or school personnel.

1 (ii) The extent to which reinstatement of the individual would
2 create a risk of school district liability or individual liability
3 for the school board or school district personnel.

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

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

7 (v) The individual's attitude concerning the incident that
8 caused the expulsion.

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

11 (vii) If the petition was filed by a parent or legal guardian,
12 the degree of cooperation and support that has been provided by the
13 parent or legal guardian and that can be expected if the individual
14 is reinstated, including, but not limited to, receptiveness toward
15 possible conditions placed on the reinstatement.

16 (f) Not later than the next regularly scheduled board meeting
17 after receiving the recommendation of the committee under
18 subdivision (e), a school board shall make a decision to
19 unconditionally reinstate the individual, conditionally reinstate
20 the individual, or deny reinstatement of the individual. The
21 decision of the school board is final.

22 (g) A school board may require an individual and, if the
23 petition was filed by a parent or legal guardian, his or her parent
24 or legal guardian to agree in writing to specific conditions before
25 reinstating the individual in a conditional reinstatement. The
26 conditions may include, but are not limited to, agreement to a
27 behavior contract, which may involve the individual, parent or

1 legal guardian, and an outside agency; participation in or
2 completion of an anger management program or other appropriate
3 counseling; periodic progress reviews; and specified immediate
4 consequences for failure to abide by a condition. A parent or legal
5 guardian or, if the individual is at least age 18 or is an
6 emancipated minor, the individual may include proposed conditions
7 in a petition for reinstatement submitted under this subsection.

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

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

16 (8) This section does not diminish the due process rights
17 under federal law of a pupil who has been determined to be eligible
18 for special education programs and services.

19 (9) If a pupil expelled from a public school district pursuant
20 to subsection (2) is enrolled by a public school district sponsored
21 alternative education program or a public school academy during the
22 period of expulsion, the public school academy or alternative
23 education program shall immediately become eligible for the
24 prorated share of either the public school academy or operating
25 school district's foundation allowance or the expelling school
26 district's foundation allowance, whichever is higher.

27 (10) If an individual is expelled pursuant to subsection (2),

1 it is the responsibility of that individual and of his or her
2 parent or legal guardian to locate a suitable alternative
3 educational program and to enroll the individual in such a program
4 during the expulsion. The office of safe schools in the department
5 shall compile information on and catalog existing alternative
6 education programs or schools and nonpublic schools that may be
7 open to enrollment of individuals expelled pursuant to subsection
8 (2) and pursuant to section 1311a, and shall periodically
9 distribute this information to school districts for distribution to
10 expelled individuals. A school board that establishes an
11 alternative education program or school described in this
12 subsection shall notify the office of safe schools about the
13 program or school and the types of pupils it serves. The office of
14 safe schools also shall work with and provide technical assistance
15 to school districts, authorizing bodies for public school
16 academies, and other interested parties in developing these types
17 of alternative education programs or schools in geographic areas
18 that are not being served.

19 (11) As used in this section:

20 (a) "Arson" means a felony violation of chapter X of the
21 Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80.

22 (b) "Criminal sexual conduct" means a violation of section
23 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA
24 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

25 (c) "Dangerous weapon" means that term as defined in section
26 1313.

27 (d) "Firearm" means that term as defined in section 921 of

1 title 18 of the United States Code, 18 ~~U.S.C.~~ **USC** 921.

2 (e) "School board" means a school board, intermediate school
3 board, or the board of directors of a public school academy.

4 (f) "School district" means a school district, a local act
5 school district, an intermediate school district, or a public
6 school academy.

7 (g) "Weapon free school zone" means that term as defined in
8 section 237a of the Michigan penal code, 1931 PA 328, MCL 750.237a.