

HOUSE BILL No. 5738

June 14, 2012, Introduced by Reps. Stallworth, Tlaib, Hammel, Santana, Nathan, Hobbs, Liss, Howze, Rutledge, Durhal and Irwin and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled "The revised school code," by amending sections 1310 and 1311 (MCL 380.1310 and 380.1311), section 1310 as amended by 2000 PA 230 and section 1311 as amended by 2008 PA 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1310. (1) If a pupil enrolled in grade 6 or above commits
2 a physical assault at school against another pupil and the physical
3 assault is reported to the school board, school district
4 superintendent, or building principal, then the school board or the
5 designee of the school board as described in section 1311(1) on
6 behalf of the school board ~~shall~~**MAY** suspend or expel the pupil
7 from the school district for up to 180 school days. A district
8 superintendent or building principal who receives a report
9 described in this subsection shall forward the report to the school

1 board. Notwithstanding section 1147, a school district is not
2 required to allow an individual expelled from another school
3 district under this section to attend school in the school district
4 during the expulsion.

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

23 (3) As used in this section:

24 (a) "At school" means in a classroom, elsewhere on school
25 premises, on a school bus or other school-related vehicle, or at a
26 school-sponsored activity or event whether or not it is held on
27 school premises.

1 (b) "Physical assault" means intentionally causing or
2 attempting to cause physical harm to another through force or
3 violence.

4 (c) "School board" means a school board, intermediate school
5 board, or the board of directors of a public school academy.

6 (d) "School district" means a school district, ~~a local act~~
7 ~~school district~~, an intermediate school district, or a public
8 school academy.

9 Sec. 1311. (1) Subject to subsection (2), the school board, or
10 the school district superintendent, a school building principal, or
11 another school district official if designated by the school board,
12 may authorize or order the suspension or expulsion from school of a
13 pupil guilty of gross misdemeanor or persistent disobedience if, in
14 the judgment of the school board or its designee, as applicable,
15 the interest of the school is served by the authorization or order
16 **AND IF SCHOOL OFFICIALS HAVE ATTEMPTED OTHER DOCUMENTED EFFORTS TO**
17 **MODIFY THE PUPIL'S BEHAVIOR WITHOUT A SUSPENSION OR EXPULSION AND**
18 **THESE EFFORTS HAVE FAILED. THESE OTHER EFFORTS TO MODIFY BEHAVIOR**
19 **MAY INCLUDE, BUT ARE NOT LIMITED TO, A COORDINATED BEHAVIOR PLAN,**
20 **ALTERNATIVE PROGRAMMING, REFERRAL FOR INDIVIDUAL COUNSELING,**
21 **BEHAVIOR CONTRACTING, IN-SCHOOL PARENT SUPERVISION, OR OTHER**
22 **EVIDENCE-BASED ALTERNATIVES TO SUSPENSION.** If there is reasonable
23 cause to believe that the pupil is a student with a disability, and
24 the school district has not evaluated the pupil in accordance with
25 rules of the superintendent of public instruction to determine if
26 the pupil is a student with a disability, the pupil shall be
27 evaluated immediately by the intermediate school district of which

1 the school district is constituent in accordance with section 1711.

2 (2) If a pupil possesses in a weapon free school zone a weapon
3 that constitutes a dangerous weapon, commits arson in a school
4 building or on school grounds, or commits criminal sexual conduct
5 in a school building or on school grounds, the school board, or the
6 designee of the school board as described in subsection (1) on
7 behalf of the school board, shall expel the pupil from the school
8 district permanently, subject to possible reinstatement under
9 subsection (5). However, a school board is not required to expel a
10 pupil for possessing a weapon if the pupil establishes in a clear
11 and convincing manner at least 1 of the following:

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

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

16 (c) The pupil did not know or have reason to know that the
17 object or instrument possessed by the pupil constituted a dangerous
18 weapon.

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

22 (3) If an individual is expelled pursuant to subsection (2),
23 the expelling school district shall enter on the individual's
24 permanent record that he or she has been expelled pursuant to
25 subsection (2). Except if a school district operates or
26 participates cooperatively in an alternative education program
27 appropriate for individuals expelled pursuant to subsection (2) and

1 in its discretion admits the individual to that program, and except
2 for a strict discipline academy established under sections 1311b to
3 1311l, an individual expelled pursuant to subsection (2) is expelled
4 from all public schools in this state and the officials of a school
5 district shall not allow the individual to enroll in the school
6 district unless the individual has been reinstated under subsection
7 (5). Except as otherwise provided by law, a program operated for
8 individuals expelled pursuant to subsection (2) shall ensure that
9 those individuals are physically separated at all times during the
10 school day from the general pupil population. If an individual
11 expelled from a school district pursuant to subsection (2) is not
12 placed in an alternative education program or strict discipline
13 academy, the school district may provide, or may arrange for the
14 intermediate school district to provide, appropriate instructional
15 services to the individual at home. The type of services provided
16 shall meet the requirements of section 6(4)(u) of the state school
17 aid act of 1979, MCL 388.1606, and the services may be contracted
18 for in the same manner as services for homebound pupils under
19 section 109 of the state school aid act of 1979, MCL 388.1709. This
20 subsection does not require a school district to expend more money
21 for providing services for a pupil expelled pursuant to subsection
22 (2) than the amount of the foundation allowance the school district
23 receives for the pupil as calculated under section 20 of the state
24 school aid act of 1979, MCL 388.1620.

25 (4) If a school board expels an individual pursuant to
26 subsection (2), the school board shall ensure that, within 3 days
27 after the expulsion, an official of the school district refers the

1 individual to the appropriate county department of social services
2 or county community mental health agency and notifies the
3 individual's parent or legal guardian or, if the individual is at
4 least age 18 or is an emancipated minor, notifies the individual of
5 the referral. **THE COUNTY DEPARTMENT OF SOCIAL SERVICES OR COUNTY
6 COMMUNITY MENTAL HEALTH AGENCY SHALL FOLLOW UP TO COORDINATE
7 COMPLETION OF A BEHAVIOR RISK ASSESSMENT THAT IS PERFORMED BY A
8 LICENSED MENTAL HEALTH OR SOCIAL WORK PROFESSIONAL AND THAT
9 INCLUDES RECOMMENDATIONS FOR EFFECTIVE INTERVENTION INCLUDING
10 ADDRESSING THE FACTORS DESCRIBED IN SUBSECTION (5) (E).**

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

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

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

12 (b) An individual who was in grade 5 or below at the time of
13 the expulsion and who has been expelled for possessing a firearm or
14 threatening another person with a dangerous weapon shall not be
15 reinstated before the expiration of 90 school days after the date
16 of expulsion. ~~An individual who was in grade 5 or below at the time~~
17 ~~of the expulsion and who has been expelled pursuant to subsection~~
18 ~~(2) for a reason other than possessing a firearm or threatening~~
19 ~~another person with a dangerous weapon shall not be reinstated~~
20 ~~before the expiration of 10 school days after the date of the~~
21 ~~expulsion.~~ An individual who was in grade 6 or above at the time of
22 the expulsion **AND WHO HAS BEEN EXPELLED FOR POSSESSING A FIREARM OR**
23 **THREATENING ANOTHER PERSON WITH A DANGEROUS WEAPON** shall not be
24 reinstated before the expiration of 180 school days after the date
25 of expulsion.

26 (c) It is the responsibility of the parent or legal guardian
27 or, if the individual is at least age 18 or is an emancipated

1 minor, of the individual to prepare and submit the petition. A
2 school board is not required to provide any assistance in preparing
3 the petition. Upon request by a parent or legal guardian or, if the
4 individual is at least age 18 or is an emancipated minor, by the
5 individual, a school board shall make available a form for a
6 petition.

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

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

1 following factors:

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

4 (ii) The extent to which reinstatement of the individual would
5 create a risk of school district liability or individual liability
6 for the school board or school district personnel.

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

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

10 (v) The individual's attitude concerning the incident that
11 caused the expulsion.

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

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

19 **(viii) THE BEHAVIOR RISK ASSESSMENT AND RECOMMENDATIONS OF THE**
20 **COUNTY DEPARTMENT OF SOCIAL SERVICES OR COUNTY COMMUNITY MENTAL**
21 **HEALTH AGENCY UNDER SUBSECTION (4).**

22 (f) Not later than the next regularly scheduled board meeting
23 after receiving the recommendation of the committee under
24 subdivision (e), a school board shall make a decision to
25 unconditionally reinstate the individual, conditionally reinstate
26 the individual, or deny reinstatement of the individual. The
27 decision of the school board is final.

1 (g) A school board may require an individual and, if the
2 petition was filed by a parent or legal guardian, his or her parent
3 or legal guardian to agree in writing to specific conditions before
4 reinstating the individual in a conditional reinstatement. The
5 conditions may include, but are not limited to, agreement to a
6 behavior contract, which may involve the individual, parent or
7 legal guardian, and an outside agency; participation in or
8 completion of an anger management program or other appropriate
9 counseling; periodic progress reviews; and specified immediate
10 consequences for failure to abide by a condition. A parent or legal
11 guardian or, if the individual is at least age 18 or is an
12 emancipated minor, the individual may include proposed conditions
13 in a petition for reinstatement submitted under this subsection.

14 (6) A school board or school administrator that complies with
15 subsection (2) is not liable for damages for expelling a pupil
16 pursuant to subsection (2), and the authorizing body of a public
17 school academy is not liable for damages for expulsion of a pupil
18 by the public school academy pursuant to subsection (2).

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

22 (8) This section does not diminish any rights under federal
23 law of a pupil who has been determined to be eligible for special
24 education programs and services.

25 (9) If a pupil expelled from a public school district pursuant
26 to subsection (2) is enrolled by a public school district sponsored
27 alternative education program or a public school academy during the

1 period of expulsion, the public school academy or alternative
2 education program shall immediately become eligible for the
3 prorated share of either the public school academy or operating
4 school district's foundation allowance or the expelling school
5 district's foundation allowance, whichever is higher.

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

25 (11) As used in this section:

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

1 (b) "Criminal sexual conduct" means a violation of section
2 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA
3 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

4 (c) "Dangerous weapon" means that term as defined in section
5 1313.

6 (d) "Firearm" means that term as defined in ~~section 921 of~~
7 ~~title 18 of the United States Code,~~ 18 USC 921.

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

10 (f) "School district" means a school district, ~~a local act~~
11 ~~school district,~~ an intermediate school district, or a public
12 school academy.

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