

HOUSE BILL No. 4490

March 21, 2013, Introduced by Reps. Stallworth, Hobbs, Townsend, Banks, Talabi, Durhal, Ananich, Knezek, Stanley, Tlaib, Nathan and Oakes 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

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

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

24 (3) As used in this section:

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

1 school premises.

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

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

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

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

1 evaluated immediately by the intermediate school district of which
2 the school district is constituent in accordance with section 1711.

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

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

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

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

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

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

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

26 (4) If a school board expels an individual pursuant to
27 subsection (2), the school board shall ensure that, within 3 days

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

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

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

~~1 school days after the date of expulsion. For an individual who was~~
~~2 enrolled in grade 5 or below at the time of the expulsion and who~~
~~3 has been expelled pursuant to subsection (2) for a reason other~~
~~4 than possessing a firearm or threatening another person with a~~
~~5 dangerous weapon, the 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 For an individual who was in grade 6 or above at the time of~~
~~9 expulsion, the parent or legal guardian or, if the individual is at~~
~~10 least age 18 or is an emancipated minor, the individual may~~
~~11 initiate a petition for reinstatement at any time after the~~
~~12 expiration of 150 school days after the date of expulsion.~~

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

(c) It is the responsibility of the parent or legal guardian

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

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

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

1 recommendation shall be based on consideration of all of the
2 following factors:

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

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

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

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

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

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

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

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

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

1 decision of the school board is final.

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

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

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

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

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

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

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

26 (11) As used in this section:

27 (a) "Arson" means a felony violation of chapter X of the

1 Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80.

2 (b) "Criminal sexual conduct" means a violation of section
3 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA
4 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

5 (c) "Dangerous weapon" means that term as defined in section
6 1313.

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

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

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

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