

HOUSE BILL No. 4002

January 13, 1999, Introduced by Rep. Jelinek 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 1995 PA 250.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 to determine if the student is handicapped, the pupil shall be
2 evaluated immediately by the intermediate school district of
3 which the school district is constituent in accordance with sec-
4 tion 1711.

5 (2) If a pupil possesses in a weapon free school zone a
6 weapon that constitutes a dangerous weapon, commits arson in a
7 school building or on school grounds, or commits criminal sexual
8 conduct in a school building or on school grounds, the school
9 board, or the designee of the school board as described in sub-
10 section (1) on behalf of the school board, shall expel the pupil
11 from the school district permanently, subject to possible rein-
12 statement 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 danger-
22 ous weapon.

23 (d) The weapon was possessed by the pupil at the suggestion,
24 request, or direction of, or with the express permission of,
25 school 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 partici-
3 pates cooperatively in an alternative education program appropri-
4 ate for individuals expelled pursuant to subsection (2) and in
5 its discretion admits the individual to that program, an individ-
6 ual expelled pursuant to subsection (2) is expelled from all
7 public schools in this state and the officials of a school dis-
8 trict shall not allow the individual to enroll in the school dis-
9 trict unless the individual has been reinstated under subsection
10 (5). Except as otherwise provided by law, a program operated for
11 individuals expelled pursuant to subsection (2) shall ensure that
12 those individuals are physically separated at all times during
13 the school day from the general pupil population. If an individ-
14 ual expelled from a school district pursuant to subsection (2) is
15 not placed in an alternative education program, the school dis-
16 trict may provide, or may arrange for the intermediate school
17 district to provide, appropriate instructional services to the
18 individual at home. The type of services provided shall be simi-
19 lar to those provided to homebound or hospitalized pupils under
20 section 109 of the state school aid act of 1979, ~~being section~~
21 ~~388.1709 of the Michigan Compiled Laws~~ MCL 388.1709, and the
22 services may be contracted for in the same manner as under that
23 section. This subsection does not require a school district to
24 expend more money for providing services for a pupil expelled
25 pursuant to subsection (2) than the amount of the foundation
26 allowance the school district receives for the pupil under

1 section 20 of the state school aid act of 1979, ~~being section~~
2 ~~388.1620 of the Michigan Compiled Laws~~ MCL 388.1620.

3 (4) IF A PUPIL POSSESSES A WEAPON THAT CONSTITUTES A DANGER-
4 OUS WEAPON IN A WEAPON FREE SCHOOL ZONE, THE SCHOOL BOARD OR AN
5 OFFICIAL OF THE SCHOOL DISTRICT SHALL NOTIFY THE APPROPRIATE
6 COUNTY FAMILY INDEPENDENCE AGENCY OR COUNTY COMMUNITY MENTAL
7 HEALTH AGENCY CONCERNING THAT INDIVIDUAL WITHIN 12 HOURS. THE
8 AGENCY SHALL CONDUCT EVALUATION AND COUNSELING OF THAT INDIVIDUAL
9 FOR 48 HOURS AT A FACILITY OF THE AGENCY. THE SCHOOL BOARD OR
10 OFFICIAL SHALL ALSO NOTIFY THE INDIVIDUAL'S PARENT OR LEGAL
11 GUARDIAN AND REFER THE PARENT OR LEGAL GUARDIAN TO THE SAME
12 AGENCY. DURING THE 48-HOUR EVALUATION AND COUNSELING PERIOD, THE
13 AGENCY SHALL DETERMINE WHETHER FURTHER INDIVIDUAL OR FAMILY COUN-
14 SELING, OR BOTH, IS REQUIRED. If a school board expels an indi-
15 vidual pursuant to subsection (2) FOR A REASON OTHER THAN POS-
16 SESSING A DANGEROUS WEAPON, the school board shall ensure that,
17 within 3 days after the expulsion, an official of the school dis-
18 trict refers the individual to the appropriate county ~~department~~
19 ~~of social services~~ FAMILY INDEPENDENCE AGENCY or county commu-
20 nity mental health agency and notifies the individual's parent or
21 legal guardian or, if the individual is at least age 18 or is an
22 emancipated minor, notifies the individual of the referral.

23 (5) The parent or legal guardian of an individual expelled
24 pursuant to subsection (2) or, if the individual is at least age
25 18 or is an emancipated minor, the individual may petition the
26 expelling school board for reinstatement of the individual to
27 public education in the school district. If the expelling school

1 board denies a petition for reinstatement, the parent or legal
2 guardian or, if the individual is at least age 18 or is an eman-
3 cipated minor, the individual may petition another school board
4 for reinstatement of the individual in that other school
5 district. All of the following apply to reinstatement under this
6 subsection:

7 (a) For an individual who was enrolled in grade 5 or below
8 at the time of the expulsion and who has been expelled for pos-
9 sessing a firearm or threatening another person with a dangerous
10 weapon, the parent or legal guardian or, if the individual is at
11 least age 18 or is an emancipated minor, the individual may ini-
12 tiate a petition for reinstatement at any time after the expira-
13 tion of 60 school days after the date of expulsion. For an indi-
14 vidual who was enrolled in grade 5 or below at the time of the
15 expulsion and who has been expelled pursuant to subsection (2)
16 for a reason other than possessing a firearm or threatening
17 another person with a dangerous weapon, the parent or legal
18 guardian or, if the individual is at least age 18 or is an eman-
19 cipated minor, the individual may initiate a petition for rein-
20 statement at any time. For an individual who was in grade 6 or
21 above at the time of expulsion, the parent or legal guardian or,
22 if the individual is at least age 18 or is an emancipated minor,
23 the individual may initiate a petition for reinstatement at any
24 time after the expiration of 150 school days after the date of
25 expulsion.

26 (b) An individual who was in grade 5 or below at the time of
27 the expulsion and who has been expelled for possessing a firearm

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

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

19 (d) Not later than 10 school days after receiving a petition
20 for reinstatement under this subsection, a school board shall
21 appoint a committee to review the petition and any supporting
22 information submitted by the parent or legal guardian or, if the
23 individual is at least age 18 or is an emancipated minor, by the
24 individual. The committee shall consist of 2 school board mem-
25 bers, 1 school administrator, 1 teacher, and 1 parent of a pupil
26 in the school district. During this time the superintendent of
27 the school district may prepare and submit for consideration by

1 the committee information concerning the circumstances of the
2 expulsion and any factors mitigating for or against
3 reinstatement.

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

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

17 (ii) The extent to which reinstatement of the individual
18 would create a risk of school district LIABILITY or individual
19 liability for the school board or school district personnel.

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

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

23 (v) The individual's attitude concerning the incident that
24 caused the expulsion.

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

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

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

13 (g) A school board may require an individual and, if the
14 petition was filed by a parent or legal guardian, his or her
15 parent or legal guardian to agree in writing to specific condi-
16 tions before reinstating the individual in a conditional
17 reinstatement. The conditions may include, but are not limited
18 to, agreement to a behavior contract, which may involve the indi-
19 vidual, parent or legal guardian, and an outside agency; partici-
20 pation in or completion of an anger management program or other
21 appropriate counseling; periodic progress reviews; and specified
22 immediate consequences for failure to abide by a condition. A
23 parent or legal guardian or, if the individual is at least age 18
24 or is an emancipated minor, the individual may include proposed
25 conditions in a petition for reinstatement submitted under this
26 subsection.

1 (6) A school board or school administrator that complies
2 with subsection (2) is not liable for damages for expelling a
3 pupil pursuant to subsection (2), and the authorizing body of a
4 public school academy established under part 6a ~~or part 6b~~ is
5 not liable for damages for expulsion of a pupil by the public
6 school academy pursuant to subsection (2).

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

10 (8) Subsections (2) to (7) do not diminish the due process
11 rights under federal law of a pupil who has been determined to be
12 eligible for special education programs and services.

13 (9) If a pupil expelled from a public school district pursu-
14 ant to subsection (2) is enrolled by a public school sponsored
15 alternative education program or a public school academy during
16 the period of expulsion, the public school academy or the alter-
17 native education program shall immediately become eligible for
18 the prorated share of either the public SCHOOL academy foundation
19 allowance or the expelling school district's foundation allow-
20 ance, whichever is higher.

21 (10) As used in this section:

22 (a) "Arson" means a felony violation of chapter X of the
23 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
24 ~~being sections 750.71 to 750.80 of the Michigan Compiled Laws~~
25 1931 PA 328, MCL 750.71 TO 750.80.

26 (b) "Criminal sexual conduct" means a violation of
27 section 520b, 520c, 520d, 520e, or 520g of ~~Act No. 328 of the~~

1 ~~Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d,~~
2 ~~750.520e, and 750.520g of the Michigan Compiled Laws~~ THE
3 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B, 750.520C,
4 750.520D, 750.520E, AND 750.520G.

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

7 (d) "Firearm" means that term as defined in ~~the federal~~
8 FORMER SECTION 1032(3) OF THE gun-free schools act of 1994, TITLE
9 X OF Public Law 103-227. ~~, 20 U.S.C. 3351.~~

10 (e) "School board" means a school board, intermediate school
11 board, or the board of directors of a public school academy
12 established under part 6a. ~~or 6b.~~

13 (f) "School district" means a school district, a local act
14 school district, an intermediate school district, or a public
15 school academy established under part 6a. ~~or 6b.~~

16 (g) "Weapon free school zone" means that term as defined in
17 section 237a of the Michigan penal code, ~~Act No. 328 of the~~
18 ~~Public Acts of 1931, being section 750.237a of the Michigan~~
19 ~~Compiled Laws~~ 1931 PA 328, MCL 750.237A.