



## **Rethink Discipline State Law Changes Summary**

Public Acts: 360-366 of 2016

Goes into effect: Aug. 1, 2017

*Michigan had one of the harshest discipline codes in the country, mandating expulsion for a large variety of reasons. The intent was to keep students safe, but evidence showed that far too many students were being removed, and that districts often felt their hands were tied and were forced to expel. In the end, students (particularly students of color and students with disabilities) were put at greater risk of school dropout and criminal justice involvement and not given the adult support needed to truly learn from their mistakes, make amends and make educational progress. Around the country, laws have changed to reduce suspensions and expulsions, and at the end of 2016, Michigan's Legislature passed the Rethink Discipline bills.*

- The new laws end state-mandated expulsions for everything except firearms (as explained below).
- School districts **must** consider using restorative practices as an alternative or in addition to suspension or expulsion under this act. According to the law, restorative practices **should be the first consideration** to remediate offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, theft, damage to property, class disruption, and harassment and cyberbullying.
- School districts **must** consider each of the following factors before **ANY** suspension (even 1 day) or expulsion under section 1310 (physical assault of a pupil), 1311(1) (gross misdemeanor or persistent disobedience), 1311(2) (possesses in a weapon free school zone a weapon that constitutes a dangerous weapon (excepting firearms), commits arson in a school building or on school grounds, or commits criminal sexual conduct in a school building or on school grounds), or 1311a (assault by pupil against employee, volunteer, or contractor):
  1. The pupil's age.
  2. The pupil's disciplinary history.
  3. Whether the pupil is a student with a disability.
  4. The seriousness of the violation or behavior committed by the pupil.
  5. Whether the violation or behavior committed by the pupil threatened the safety of any pupil or staff member.
  6. Whether restorative practices will be used to address the violation or behavior committed by the pupil.
  7. Whether a lesser intervention would properly address the violation or behavior committed by the pupil
  - **NOTE:** This section does not apply to a pupil being expelled under section 1311(2) for possessing a firearm in a weapon free school zone.



- **NOTE:** Removals over 10 days should have written documentation of the 7 factors. LEAs should consult with legal counsel about when to put consideration of the 7 factors in writing for removals under 10 days.
- The new laws create a rebuttable presumption that a suspension of 10 days or more or expulsion is **not justified** under section 1310 (physical assault of a pupil), 1311(1) (gross misdemeanor or persistent disobedience), 1311(2) (possesses in a weapon free school zone a weapon that constitutes a dangerous weapon (excepting firearms), commits arson in a school building or on school grounds, or commits criminal sexual conduct in a school building or on school grounds), or 1311a (assault by pupil against employee, volunteer, or contractor), unless the board or board of directors, or its designee, can demonstrate that it considered each of the factors listed above (age, discipline history, lesser interventions, etc.)
  - For suspension of 10 or fewer days, a district is now required to consider the above factors, but there is no rebuttable presumption.
  - Again, this section does not apply to a pupil being expelled under section 1311(2) for possessing a firearm in a weapon free school zone.
  - **NOTE:** The school discipline code does not define “rebuttable presumption,” but in common law and civil law, a rebuttable presumption is an assumption taken to be true unless someone comes forward to contest it and prove otherwise. For example, a defendant in a criminal case is presumed innocent until proved guilty.

### Firearms

- Federal law requires LEAs to expel students for a year for possession of a firearm at school EXCEPT when state law allows modifications for a student on a case-by-case basis if the modification is in writing. Michigan law continues to require expulsion for possession of a firearm **unless** the pupil establishes in a clear and convincing manner one of the following:
  - The firearm possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.
  - The firearm was not knowingly possessed by the pupil.
  - The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a firearm.
  - The firearm was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.
- If a pupil establishes one of these factors, expulsion becomes **discretionary**. If **not**, the LEA **must** expel permanently, subject to reinstatement after 90 days for students in grade 5 or below or 180 days for students grade 6 or above.



- The new law adds a [rebuttable presumption](#) that expulsion for possession of a firearm is **not justified** if both (a) and (b) are met:
  - (a) The school board or its designee determines in writing that at least 1 of the following factors) has been established in a clear and convincing manner.
    - The firearm possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another person for use as a weapon.
    - The firearm was not knowingly possessed by the pupil.
    - The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a firearm.
    - The firearm was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.
  - (b) The pupil has no history of suspension or expulsion.

#### **New Definitions of Note:**

- Expel: to exclude a student from school for disciplinary reasons for a period of **60** or more days.
- Suspend: to exclude a student from school for disciplinary reasons for a period of **fewer than 60** days.
- Firearm: (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm. (defined in Title 18 of the United States Code, 18 USC 921)
- Restorative practices mean practices that emphasize repairing the harm to the victim and the school community caused by a pupil's misconduct. This may include victim-offender conferences that are initiated by the victim; that are approved by the victim's parent or legal guardian or, if the victim is at least age 15, by the victim; that are attended voluntarily by the victim, a victim advocate, the offender, members or the school community, and supporters of the victim and the offender; and that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the misconduct and to participate in setting consequences to repair the harm. The attendees, known as a restorative practices team, may require the pupil to do 1 or more of the following:
  - apologize;
  - participate in community service,
  - counseling;
  - pay restitution.



- The selected consequences shall be incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

**Resources:**

<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-5618-B4A00637.pdf>

<http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0360.pdf>

<http://www.legislature.mi.gov/documents/2015-2016/publicact/pdf/2016-PA-0361.pdf>



### Amended Michigan School Discipline Code

<b>Mandatory Expulsion</b> 180 days for grade 6 and up 90 days for grades 5 and under All public schools, permanent record	<b><u>MUST Suspend/Expel</u></b>	<b>Discretionary Suspensions/Expulsions</b> Only after considering lesser interventions and factors such as age, disciplinary history and disability status	<b>Should Not Expel</b>	<b>Can't expel</b>
<p><del>Possession of a dangerous weapon unless exceptions are not met (see May Suspend/Expel section) (380.1314)</del></p> <p><del>(firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles. 380.1313)</del></p> <p>Knowingly possessed a firearm to use it</p>	<p><del>6th grade</del>  <del>≥ assault</del>  <del>another student</del>  <del>(380.1310)</del></p>	<p>Possessed a firearm but .... (a) The firearm possessed by the pupil was not possessed for use as a weapon, or for direct or indirect delivery to another person for use as a weapon. (b) The firearm was not knowingly possessed by the pupil. (c) The pupil did not know or have reason to know that the firearm constituted a dangerous weapon. (d) The firearm was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.</p>	<p>Possessed a firearm but an exception (see left) applies AND the student has no history of suspension or expulsion.</p>	<p>Teen for being pregnant (380.1301)</p>
<p><del>Arson in a school building / school grounds (defined as a felony violation of chapter X of the Michigan penal code, 1931 PA 328, MCL 750.71 to 750.80; Willfully and maliciously burns, damages, or destroys by fire or explosive 750.71)</del></p>	<p><del>6th grade</del>  <del>≥ verbal assault</del>  <del>another staff</del>  <del>(380.1311</del>  <del>a)</del>  <del>(verbal assault not defined, up to local board policy)</del></p>	<p>Physical assault of a pupil, gross misdemeanor or persistent disobedience, possesses in a weapon free school zone a weapon that constitutes a dangerous weapon (excepting firearms), commits arson in a school building or on school grounds, commits criminal sexual conduct in a school building or on school grounds, or assault by pupil against employee, volunteer, or contractor (NOTE: Removals of more than 10 days are NOT justified unless the board has considered several factors such as age, disciplinary history, disability status and lesser interventions).</p>	<p>Interpersonal conflicts, bullying, verbal and physical conflicts, theft, damage to property, class disruption, and harassment and cyberbullying should be</p>	



			addressed using restorative practices.	
Criminal sexual conduct in a school building or on school grounds (defined as "a violation of section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g")	6th grade ≥ makes a bomb threat against school property (380.1311 a)			
6th grade ≥ assault another staff (380.1311a) (defined as intentionally causing or attempting to cause physical harm)				