



MDIE Recommends

SUSPENSIONS AND EXPULSIONS

The sections of the *Revised School Code* that address this issue are contained in the Michigan Compiled Laws under MCL 380.11a, 380.1309, 380.1310, 380.1311, 380.1311a, 380.1312, 388.1606 and 388.1707.

SUSPENSIONS AND EXPULSIONS IN GENERAL

The *Revised School Code* provides each school board with the authority to establish a local discipline policy. Each local school board has the authority to make reasonable regulations relative to anything necessary for the proper establishment, maintenance and management of the schools in the district. Districts shall develop and implement a code of student conduct and enforce its provisions with regard to a pupil's misconduct in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises. Students guilty of gross misdemeanor or persistent disobedience may be suspended or expelled. A local or intermediate school district or a public school academy must develop and implement a code of student conduct and enforce the provisions of that code regarding misconduct [MCL 380.11a, 380.1311, 380.1312].

DUE PROCESS

Fairness dictates that students be given notice of the types of conduct which are prohibited and the potential consequences of the misconduct. A school's rules and procedures for suspending or expelling a student should be outlined in the handbook adopted by the local board of education.

Suspension—10 Days or Less

For a suspension of 10 days or less, a student is entitled to minimal due process protections, including oral or written notice of the accusation(s), what disciplinary measures are being proposed, and an opportunity to respond. If feasible, the notice and hearing should precede the student's removal from school. If the student's presence poses a danger to persons or property or threatens to disrupt the academic process, prior notice and hearing may not be feasible. In this case, a hearing should follow the student's removal from school as soon as possible.

Suspension – More Than 10 Days and Expulsions

A more formal due process procedure is required when serious disciplinary measures are alleged against a student. The student shall be given reasonable time to prepare for the hearing. The person conducting the disciplinary hearing must be impartial. The board of education, a school administrator or disciplinary panel may conduct the hearing as long as they are truly impartial.

Students with Disabilities

Students with disabilities are afforded specific due process protection in cases of suspension or expulsion under state and federal law. For further information, contact your local or intermediate special education director or the Office of Special Education and Early Intervention Services at (517) 373-0923 or toll-free at (888) 320-8384.



MDE Recommends

TYPES OF SUSPENSIONS AND EXPULSIONS

Michigan Law requires a school district to permanently expel a student who possesses a dangerous weapon, commits arson or criminal sexual conduct. Subsequent laws were enacted that allow a one-day snap suspension by a teacher for a student who creates a safety threat; requires school districts to suspend or expel a student for up to 180 school days who commits a physical assault against another student; requires that a student be suspended or expelled for a verbal assault or a bomb threat; and requires a student who commits a physical assault against a school employee or volunteer to be permanently expelled. The following information describes the law.

Weapons, Arson or Criminal Sexual Conduct Expulsion

School districts are required to permanently expel a student who possesses a dangerous weapon, commits arson, or criminal sexual conduct [MCL 380.1311]. Information on *Expulsions Due to Weapons, Arson, and Criminal Sexual Conduct* is available either by contacting the Customer Satisfaction Unit at (517) 373-6534 or toll-free at (888) 323-4231, or accessing through the World Wide Web at: <http://www.michigan.gov/mde>.

Teacher “Snap” Suspension

A teacher may suspend a student from the classroom for up to one day if the student creates a safety threat as defined by local policy. The policy shall be adopted as part of the school district’s code of student conduct and specify the types of behavior for which a student may be suspended. If a student is retained in the school he or she must be under appropriate supervision. A parent-teacher conference shall follow the suspension as soon as possible and may include a school counselor, school psychologist, or school social worker. A student may return that school day to the classroom, subject or activity for which he or she was suspended, with the concurrence of the teacher and the school principal [MCL 380.1309].

Verbal Assault and Bomb Threats

A student in grade 6 or above who commits verbal assault, as defined by school board policy, against an employee or volunteer of a school district or makes a bomb threat or similar threat at a school building, other school property, or a school-related event, shall be suspended or expelled for a period of time as determined by the school board or its designee. The school board policy should include the types of behavior for which a student who commits verbal assault, or makes a bomb threat or similar threat, would be suspended or expelled. The term “verbal assault” would need to be defined by the school district’s local policy [MCL 380.1311a]. The United States District Court ruled that the verbal assault law unlawfully prohibits students’ speech that is protected by the First Amendment [Smith v Mount Pleasant Public Schools, E Dist Mich, 2003].

Physical Assault - Student to Student

A student in grade 6 or above who commits physical assault against another student shall be suspended or expelled for up to 180 school days by the school board or its designee if the physical assault is reported to the school board, superintendent, or principal. The term “physical assault” means “intentionally causing or attempting to cause physical harm to another through force or violence” [MCL 380.1310].



MDIE Recommends

Physical Assault - Student to Employee or Volunteer

A student in grade 6 or above who commits a physical assault against an employee or a volunteer of a district, at school or on school grounds, shall be expelled permanently, subject to possible reinstatement provided for in the law. The term “physical assault” means “intentionally causing or attempting to cause physical harm to another through force or violence” [MCL 380.1311a].

If a student is permanently expelled pursuant to section 380.1311a, the expelling school district must enter that fact on the student’s permanent record. Within 3 days of permanently expelling a student an official of the school district must refer the student to the appropriate county department of social services or county community mental health agency. Notification of this referral must be given by the school district official to the expelled student if he or she is at least 18 years of age or is an emancipated minor, or to the student’s parent or legal guardian.

Petitioning for Reinstatement

Although the law calls for the “permanent” expulsion of a student who commits a physical assault against an employee or a volunteer of a district, at school or on school grounds, subsection (5) provides a process for petitioning for reinstatement to school. It is the responsibility of the petitioning person (a parent, legal guardian, or the expelled student if he or she is at least 18 years of age or is an emancipated minor), to prepare and submit the petition for reinstatement. The school board is not required to assist in the preparation of the petition. If a petition form is requested by a person wishing to be reinstated, the school board must make the petition form available.

A parent, legal guardian, or the student (if he or she is at least 18 years of age or an emancipated minor) may initiate a petition any time after 150 school days following the date of expulsion. A student may be reinstated 180 school days following the date of expulsion. The local school board may include conditions in a petition for reinstatement. If the expelling school board denies a petition for reinstatement, the petitioner may petition another school board for reinstatement. The following timelines and procedures apply to reinstatement.

Committee Review and Recommendation

Within 10 school days after receiving a petition for reinstatement, the school board must appoint a committee comprised of two school board members, one school administrator, one teacher, and one parent of a student in the school district to review the petition and any supporting information submitted by the petitioner. During this time, the superintendent may prepare and submit information concerning the circumstances of the expulsion and any factors weighing in favor of or against reinstatement.

Not later than 10 school days after being appointed, the committee must review the petition and supporting information together with information provided by the school district and submit a recommendation to the school board. The committee may recommend unconditional reinstatement, conditional reinstatement, or against reinstatement. The



MDIE Recommends

recommendation must be accompanied by an explanation of the reasons for the recommendation. If the recommendation is for conditional reinstatement, it must include any recommended conditions.

The committee's recommendation must be based on all of the following factors:

- (1) The extent to which reinstatement of the student would create a risk of harm to pupils or school personnel.
- (2) The extent to which reinstatement would create a risk of school district or individual liability for the school board or school district personnel.
- (3) The age and maturity of the individual.
- (4) The student's school record before the incident that caused the expulsion.
- (5) The student's attitude concerning the incident that caused the expulsion.
- (6) The student's behavior since the expulsion and the prospects for remediation.
- (7) If the petition was filed by a parent or legal guardian, the degree of cooperation and support that has been provided by, and that can be expected from, that person if the student is reinstated, including, but not limited to, receptiveness toward possible conditions placed on the reinstatement.

School Board Decision

After receiving the committee's recommendation, the school board must make a decision no later than the next regularly-scheduled board meeting. The school board must decide either to reinstate the student, conditionally reinstate the student, or deny reinstatement.

Before conditionally reinstating the student, a school board may require a student and the parent or legal guardian to agree in writing to specific conditions. The conditions may include, but are not limited to, the following:

- (1) Agreement to a behavior contract which may involve the student, parent or legal guardian, and an outside agency;
- (2) Participation in, or completion of, an anger management program or other appropriate counseling;
- (3) Periodic progress reviews; and
- (4) Specified immediate consequences for failure to abide by a condition.

The law provides that the decision of the school board is final.

ALTERNATIVE EDUCATION

A school district **may** provide an alternative education for a student who has been suspended or expelled. The Michigan Attorney General issued an opinion cited as 1985 OAG 6271 in which he stated that the board of education of a school district which, in accordance with due process requirements, suspends, for a lengthy period of time, or permanently expels, a non-handicapped student who is subject to the compulsory education requirements, **is not mandated to provide an alternative education program** for a student.



MDIE Recommends

It is the responsibility of the parent or legal guardian to locate a suitable alternative education program and to enroll their child in a program during the expulsion. For further information regarding alternative education programs available in your area, contact your local or intermediate school district or the Office of Safe Schools at (517) 241-0726 or accessing their web site at: <http://michigansafeschools.org>.

A student who has been suspended or expelled from his or her resident district for any reason may attend a nonresident alternative education program without the resident district's approval [MCL 388.1606(6)(h)]. In addition, a student who previously dropped out of school, is pregnant or is a parent, or has been referred to the program by the court may attend a nonresident alternative education program without the resident district's approval.

Alternative Placement - Student to Employee or Volunteer Physical Assault Expulsion

Unless the school district operates or participates in an alternative education program appropriate for a student expelled pursuant to section 380.1311a(2) **and at the school district's discretion admits the student** to that program or a "strict discipline academy," the student is expelled from all Michigan public schools. A student cannot be enrolled unless a petition for reinstatement has been granted [MCL 380.1311a(2)].

A program operated for expelled students must ensure that a student is physically separated at all times during the school day from the general pupil population. If the student is not placed in an alternative education program or a "strict discipline academy," the school district **may** provide or arrange for the intermediate school district to provide to the student appropriate instructional services at home. Homebound services are designed to help students who are unable to attend school to keep up with their studies [MCL 388.1709].

If there is no available alternative education program through his or her resident district, an expelled student may enroll in an adult education program [MCL 388.1707(2)(b)(ii)]. The expelled student must be at least 16 years of age on September 1 of the school year. The reason of expulsion must be due to weapons, arson, criminal sexual assault or physical assault against an employee or a volunteer of the district.

The Michigan Compiled Laws are accessible on the Internet at:
<http://michiganlegislature.org>

This information is provided as a service of the Michigan Department of Education and is distributed with the understanding that the Department is not engaged in rendering legal advice. Those individuals desiring or requiring legal advice should seek the services of an attorney.

FINAL October 2008