

Rethinking Discipline

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***student
advocacy
center***

of MICHIGAN

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**Statewide Student Rights
Helpline**

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- School Discipline
 - Current Michigan Law
 - Student Rights
 - Alternatives to suspension/expulsion
 - Special Education Protections

4

We believe..

Every Student is Worthy of a Quality Education

- ▶ Students have a right to learn - no matter what!
- ▶ Support student in K-12th grades.
- ▶ Stand up for students' rights when they are
 - ▶ Suspended / Expelled
 - ▶ Denied special education support
 - ▶ Faced with racism and other barriers

Injustice in Education

- ▶ Black students are suspended and expelled at a rate three times greater than white students.
- ▶ Students with disabilities are twice as likely to receive an out-of-school suspension as their nondisabled peers.
- ▶ Students who are suspended or expelled are 14% more likely to drop out of school.

Student Rights Helpline

Statewide Education Support for K-12 Students

SAC is here to help parents of students who are experiencing challenges in school. Our Helpline is the only place in Michigan for general education and special education students to receive no-cost support and education advocacy advice.



- **We examine each case and help families understand their options.**

- **We answer questions, provide advice, review record, assist in writing letters to schools.**

- **File complaints, contact school officials on a family's behalf, develop action plans, research resources and more.**



School Discipline

Michigan School Discipline History

1990 / 1994

- ▶ Get tough on crime movement
- ▶ Gun Free School Act passed
- ▶ Michigan enacts zero tolerance, exceeding federal law.

1995

- ▶ Additional mandatory expulsions added

Michigan School Discipline History, continued

1999

- ▶ Columbine shooting
- ▶ Additional mandatory expulsions added

Early 2000s

- ▶ Research emerges about harm of zero tolerance

What does the research say about removals?

- ▶ Actually predict higher future rates of misbehavior
- ▶ Damage perceptions among students of school safety
- ▶ Increase risk of school failure and dropout
- ▶ Increase risk of criminal legal system involvement
- ▶ Negatively impacts mental health and risk of suicidal ideation

Michigan School Discipline History, continued

2013

- ▶ Michigan School Justice Partnership launched

2016

- ▶ Rethink Discipline bills launched

Aug. 1, 2017

- ▶ Rethink Discipline laws go into effect



Changes in the Law

What were the changes?

- ▶ Defined suspensions/expulsions by the number of days.
- ▶ Added 7 factor review for all removals.
- ▶ Created rebuttable presumption.
- ▶ Required consideration of restorative practices.

Expulsions defined as days

- Defines suspensions: < 60 days
- Defines expulsion: ≥ 60 days

7 Factors

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

Rebuttable Presumption

There is a **rebuttable presumption** that removal over 10 days is **not justified** unless the board, or its designee, can **demonstrate** that it considered **each** of the 7 factors. (not applicable firearms)

A rebuttable presumption is an assumption **taken to be true** unless someone comes forward to contest it and prove otherwise.

Restorative practices requirement

Districts must consider restorative practices as an alternative to or in addition to suspension or expulsion.

What are restorative practices – what the law says.

Restorative practices mean practices that emphasize repairing the harm to the victim and the school community caused by a pupil's misconduct.

May include:

- ▶ **Voluntary** victim-offender conferences that are initiated by the victim.
 - ▶ Attended voluntarily.
 - ▶ Opportunity for offender to accept responsibility and participate in setting consequences.
 - ▶ Written agreement with set time limits, signed by participants, that includes consequences such as apology; community service; counseling; etc.

Restorative practices requirement, continued

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
- harassment and cyberbullying

What are other restorative practices?

The law only names the most formal practices but there are other options to repair harm / respond to wrongdoing:

- ▶ Restorative questions
- ▶ Impromptu conference
- ▶ Class circle (problem-solving)
- ▶ Re-entry circle
- ▶ Restorative conference with impacted staff, victim statement shared (when victim does not want to participate)



Why can someone be suspended
or expelled?

Broad Overview

Districts **may** suspend or expel ...

- A pupil who commits criminal sexual conduct against another pupil enrolled in the same school district.
- A pupil guilty of gross misdemeanor.
- A pupil guilty of persistent disobedience
- As outlined in the district code of conduct
 - (note: codes are not always aligned with the new laws)

EXCEPT

Broad Overview

EXCEPT ...

If there is reasonable cause to believe that the pupil is a student with a disability, and the school district has not evaluated the pupil, the pupil **shall be** evaluated immediately.

And not until ...

7 factors have been considered



What about mandatory expulsions?

Mandatory removals under OLD LAW

Mandatory Permanent Expulsions (180 days or 90 days, depending on age)

- Possession of a dangerous weapon unless exceptions were met (firearm, dagger, dirk, stiletto, knife with a blade over 3 inches, pocket knife opened by a mechanical device, iron bar, brass knuckles)
- Arson in a school building
- Criminal sexual conduct in a school building or on school grounds
- Assault another staff member (6th grade or older)

Mandatory Suspensions / Expulsions

- Assault against another student (6th grade or older)
- Verbal assault against staff (6th grade or older)
- Bomb threat against school property (6th grade or older)

New Law

Mandatory “Permanent” Expulsions

Possession of a ~~dangerous weapon~~ unless exceptions were met (firearm, dagger, dirk, stiletto, knife with a blade over 3 inches, pocket knife opened by a mechanical device, iron bar, brass knuckles)

- ~~Arson in a school building~~
- ~~Criminal sexual conduct in a school building or on school grounds~~
- ~~Assault another staff member (6th grade or older)~~

Mandatory Suspensions / Expulsions

- ~~Assault against another student (6th grade or older)~~
- ~~Verbal assault against staff (6th grade or older)~~
- ~~Bomb threat against school property (6th grade or older)~~

Firearm Exception

A school board is **not** required to expel a pupil for possessing a firearm if the pupil establishes in a clear and convincing manner at least 1 of the following:

- ▶ (a) The object or instrument possessed by the pupil was not possessed by the pupil for use as a weapon, or for direct or indirect delivery to another individual for use as a weapon.
- ▶ (b) The weapon was not knowingly possessed by the pupil.
- ▶ (c) The pupil did not know or have reason to know that the object or instrument possessed by the pupil constituted a dangerous weapon.
- ▶ (d) The weapon was possessed by the pupil at the suggestion, request, or direction of, or with the express permission of, school or police authorities.

“Mandatory” or Not?

Law still says “shall,” but references

- ▶ 7 factors **MUST BE CONSIDERED** before **any** suspension, even 1 day.
- ▶ There is a rebuttable presumption that a suspension of more than 10 days is **NOT JUSTIFIED** unless it can be demonstrated that 7 factors were considered.
- ▶ Restorative practices **MUST** be considered as an alternative to removal or in addition to removal.

Impact of Expulsion

- ▶ Most long-term suspensions and expulsions should technically only be removals from their schools, but practically, schools can and do deny students from attending.
- ▶ If the expulsion is mandatory, the student is expelled from all public schools in this state and districts shall not allow the individual to enroll.
 - ▶ EXCEPT if a school district operates or participates cooperatively in an appropriate alternative education and in its discretion admits the student.
 - ▶ EXCEPT if the student is enrolling in a “strict discipline academy.”

Reinstatement

Reinstatement is possible

- o Petition must be initiated by family.
- o Submitted to expelling school board or another school
- o Reinstatement is voluntary
- o District can choose to:
 - Fully Reinstatement
 - Reinstatement with conditions
 - Deny Reinstatement



Other relevant case laws

Education Rights

You do not have a constitutional right to an education.

What is part of a fair process?

- Notice that behavior constitutes violation & leads to suspension or expulsion
- Notice of charges against student
- Opportunity to be heard in response to charge

How much fairness is required?

Suspension of < 10 days

- Oral or written notice with explanation of evidence
- Informal “hearing” with opportunity to explain, deny

How much fairness is required?

Suspension of 10+ days

- No punishment without substantial evidence
- Confrontation & cross examination of witnesses
- Lawyer permitted (some jurisdictions)
- Impartial tribunal
 - Not a witness, instigator or investigator of charges, object of misconduct

Manifestation Determination Review

- Required for students with an IEP or 504 Plan after 10 days of suspension.
 - Should include the IEP/504 team, parent/guardian and student.
 - The school has the right to make the final decision but parent/guardian and student should have input.

Manifestation Determination Review

- Must answer two questions:
 - Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability?
 - Was the conduct in question the direct result of the district's failure to implement the student's IEP?

Free Speech ... but some limits in school

Students can be disciplined if their expression would lead to either

(a) a substantial disruption of the school environment, or

(b) an invasion of the rights of others.

Speech that involves incitement, false statements of fact, obscenity, child pornography, threats, and speech owned by others are all completely exempt from First Amendment protections.



Deeper Dive Into 7 Factors

STUDENT DISCIPLINARY 7 FACTOR WORKSHEET

<https://goo.gl/eYcJR8>

Pursuant to [MCL 380.1310d](#) school districts must consider the following factors before any suspension or expulsion of a student. Written documentation should be filed.

NOTE: The new laws create a [rebuttable presumption](#) that a suspension of 10 days or more or expulsion is **not justified**. 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. Research on school removals shows that it leads to dropout, school failure, increased absenteeism, damaged perceptions of school safety and increased involvement in the criminal justice system.

Student Name: _____ Grade: _____ School: _____

Student ID: _____ DOB: _____ Date of Meeting: _____

	Responses	Implications on disciplinary action
What is the student's age?		
Does the student have a disciplinary history? If so, please elaborate or attach documentation.		
Does the student have a disability?		

Age

- Consider the student's developmental stage.
- Consider the grade and impact on learning (K-3, 9th, 12th)

Behavior

- Is the behavioral history relevant?
- Are there patterns?
- What have been past positive interventions and what has the response to the interventions?

Disability

- ▶ Should the student be evaluated?
- ▶ Is there some other way the disability played a role?

Seriousness

- ▶ What was the seriousness of the violation or behavior?
- ▶ Who was harmed?
- ▶ The severity of the harm (injuries)?
- ▶ Other context.
- ▶ How does district policy and state law treats these types of incidents?

Harm

- ▶ Did the violation or behavior threaten the safety of other students or staff? If so, how?

Guidelines for Lesser Interventions

- ▶ Involve student and parent/guardian
- ▶ Use restorative practices to get to alternatives
 - ▶ Restorative questions
 - ▶ Problem-solving circles
 - ▶ Formal conferencing
- ▶ Design to get to the root of the problem
- ▶ Consider how harm may be repaired
- ▶ Consider resources (of student, school and family)
- ▶ Partner with the community
- ▶ Check your expectations / personal feelings
 - ▶ Drifting back to punishment mode?

Alternatives to Removal - Other alternatives

- Restorative conference
- Reflection papers (with adult support)
- Skills modules
- Referrals for counseling / substance abuse assessment
- Community service (if practical)

Resources

Please see our site, <http://www.studentadvocacycenter.org/policy/rethink/>, for lots of resources:

- ▶ Summary of law changes
- ▶ 7 factor worksheet for your district
- ▶ Lesser intervention worksheet
- ▶ Training resources

Michigan Department of Education School Discipline Toolkit

http://www.michigan.gov/mde/0,4615,7-140-74638_72831—,00.html

THANK YOU!

Any Questions???

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Michigan Alliance for Families

In collaboration with



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