

5-N: SUSPENSION AND EXPULSION

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 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 bus or other school-related vehicle, or at a school sponsored activity or event whether or not it is held on school premises. Pupils 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 380.1309-380.1311a]. The school district's rules and procedures for suspending or expelling a pupil should be outlined in the student handbook adopted by the local board of education.

A) Requirements for Counting in Membership

The district may provide the pupil with an education or the district may contract with another district or the intermediate district to provide the education for a suspended or expelled pupil. In order to count the suspended or expelled pupil for membership purposes a district must show that it fulfilled the requirements below:

- 1) The **pupil must meet pupil membership eligibility requirements** pursuant to Section 6(4) or 6(6) of the State School Aid Act (MCL 388.1606) **and any other applicable statute.**
- 2) The **pupil shall be registered, enrolled, and participating in the course(s)** pursuant to Section 6(4), Section 6(8) and Section 6a of the State School Aid Act (MCL 388.1606 and MCL 388.1606a).
- 3) **Short Term Suspensions** (10 days or less) are conducted much like an "in-house suspension," and the following must occur during the count period:
 - a. The attendance book of the teacher of record must show the pupil was absent from class due to suspension.
 - b. The pupil must be supervised by a certificated staff member with attendance taken where pupil is served.
- 4) **Pupils on Long Term Suspensions or Expulsions** (up to 180 days): The parent or legal guardian of a *general education pupil* who has been suspended or expelled is responsible to find an educational program for that pupil. The district may choose to educate a pupil on long term suspension or expulsion through an in-house suspension program with a certificated teacher or in an alternative education program itself. The alternative education program may be operated by the expelling district itself or contracted through another local school district or through the intermediate school district. In order to count such a pupil for membership purposes the following must occur:
 - a. Attendance must be taken where the pupil is served.
 - b. Pupil instruction must be provided by a certificated teacher.
 - c. Instruction must be academic in nature and leading to credit toward grade progression or a high school diploma.
 - d. Non-resident pupils, enrolled in and attending an alternative education program, who have been suspended or expelled from the resident district may be counted for membership purposes without a release from the resident district.
 - e. Membership is pro-rated based upon the minimum required hours of pupil instruction for grades 1-12.

- 5) **Pupils Who Have Been Permanently Expelled:** A pupil who has been permanently expelled from the district pursuant to Sections 380.1311(2) or 380.1311a is expelled from all public school districts in Michigan. A district that operates an alternative education program appropriate for such a student may enroll the pupil without the resident district's approval. The alternative education program operated for suspended or expelled pupils must ensure that these pupils are separated from the general population at all times during the school day. The suspended or expelled pupil must petition for reinstatement prior to enrolling in an alternative education program that is not specific for suspended or expelled pupils. If there is no available alternative education program through the resident district, an expelled pupil may enroll in an adult education program. Another possible option may be the seat time waiver program.
- a. The expelling district may enroll a pupil in an alternative education program through a cooperative agreement with an intermediate school district or with another local school district. The FTE for such a pupil is prorated based upon the actual annualized hours the pupil is enrolled and in attendance on the count date as bears to the minimum required hours for a full-time pupil.
 - b. The expelling district may provide the pupil who has been permanently expelled, pursuant to Sections 380.1311(2) or 380.1311a, with two (2) one-hour individualized instructional periods per week with a certificated teacher following the home-based procedures and count that pupil for a full membership. The expelling district may provide the pupil with instruction in the pupil's home, at a site off school campus such as at the local library, or at a site on campus where no other pupil from the general population will come into contact with the expelled pupil during the regular school day.

Note: A pupil provided a minimum of two nonconsecutive hours per week of individualized instruction, who was suspended or expelled under local school board policy, is a pro-rated FTE with the pro-ration based on the number of hours of instruction the district actually provides to the pupil divided by the minimum number of hours required for full-time equivalency.

In order to count a pupil under either option above the district must ensure that the following occur:

- a. The pupil is enrolled in the district for the purpose of receiving instruction.
- b. The district works with the pupil to develop an instructional plan for self study.
- c. The district provides the textbooks and other instructional materials.
- d. A certificated teacher provides a minimum of two non-consecutive hours of direct pupil instruction per week.

B) Types of Suspensions and Expulsions

Suspensions and expulsions vary in the seriousness of the behavior and the length and severity of the punishment. They may range from a one-day in-house suspension to permanent expulsion. Pupils with disabilities are afforded specific due process protection in cases of suspensions or expulsions under state and federal law. *If there is reasonable cause to believe that the pupil is disabled, and the school district has not evaluated the pupil in accordance with rules of the State Board to determine if the pupil is disabled, the pupil shall be evaluated in an expedited manner in accordance with 34 CFR 300.527.*

1) Short Term Suspensions

These may be 10 consecutive days or less such as a Teacher "Snap" suspension for

persistent misconduct. Suspensions that are for 10 consecutive days or less in length require minimal due process protection, including oral or written notice of accusation(s), explanation of evidence to support the charges, defined disciplinary measures, and an opportunity for the pupil to respond.

Note: IDEA and/or Section 504 stipulates that a district may suspend or expel a pupil with disabilities if it does not alter the pupil's educational placement or deny a free appropriate education. A suspension of 10 days or less does neither. (34 CFR 300.121(d)(1)) Before suspending a pupil for more than 10 days, the district must comply with the IDEA safeguards and/or Section 504. See "Special Education Considerations in Student Discipline Procedures, March 2000".

2) Long Term Suspensions or Expulsions

A local board of education may authorize or order the suspension or expulsion from school for a pupil guilty of a "gross misdemeanor" or "persistent disobedience" for a period up to 180 days. The pupil must be given reasonable time to prepare for a hearing. The person conducting the hearing must be impartial. Application for reinstatement depends upon the pupil's grade level and the level of seriousness of the incident.

a. Verbal Assaults and Bomb Threats

A pupil in grade 6 or above who commits a verbal assault, as defined by the local school board policy, against an employee or volunteer of the 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 length of time as determined by the local school board or its designee. [MCL 380.1311a(2)] A verbal assault or a bomb threat could be a permanent expulsion if the pupil is permanently expelled as the result of a school board defined verbal assault or due to a bomb threat.

b. Physical Assault

Pupil to Pupil - Physical assault means intentionally causing or attempting to cause physical harm to another through force or violence. A pupil in grade 6 or above who commits a physical assault against another pupil shall be suspended or expelled for up to 180 days as determined by the local school board or its designee. [MCL 380.1310]

3) Permanent Expulsions

A district, or the district's designee, is required to permanently expel a pupil from the district for weapons, arson, criminal sexual conduct or physical assault to an employee, volunteer, or a person contracted by the school district. These are referred to as "**State Mandated**" Expulsions.

a. Dangerous Weapons

A pupil found to be in possession of a dangerous weapon in a weapon free school zone, must be separated from the general pupil population and is expelled from all public school districts within the state (*Revised School Code* - section 380.1311(2)) until such time of reinstatement under section 380.1311(5).

Dangerous weapons are defined as a firearm, dirk, dagger, stiletto, iron bar, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, and brass knuckles. Firearm is defined under the federal Gun-Free Schools Act of 1994 as:

- Any weapon (including a starter gun) which will or is designed or may readily be converted to expel a projectile by the action of an explosive.
- The frame or receiver of any such weapon.

- Any firearm muffler or firearm silencer.
- Any destructive device.

A school board, or the district designee, is not required to expel the pupil if the pupil can establish in a clear and convincing manner at least one of the following:

- The object or instrument possessed by the pupil was not possessed for the use as a weapon, or for a direct or indirect delivery to another person for the use as a weapon.
- The weapon 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 dangerous weapon.
- The weapon was possessed by the pupil at the suggestion, request or direction of, or with the express permission of school or police authorities.

b. Arson

Arson means a felony violation of Chapter X of the Michigan penal code MCL 750.71-80. A pupil found to be guilty of committing arson in a school building or on school grounds must be separated from the general pupil population and is expelled from all public school districts within the state (Revised School Code - Section 380.1311(2)) until such time of reinstatement under Section 380.1311(5).

c. Criminal Sexual Assault

Criminal Sexual Assault means a violation of Section 520(b)-(g) of the Michigan Penal Code being MCL 750.520(b)-(g). A pupil who commits criminal sexual conduct in a school building, on school grounds, or at a school function must be separated from the general pupil population and is expelled from all public school districts within the state (Revised School Code 380.1311(2)) until such time of reinstatement under Section 380.1311(5).

d. Physical Assault - Pupil to Employee, Volunteer or a Person Contracted by the District

Physical Assault is defined in section 380.1311a of the Revised School Code as the act of intentionally causing or the attempting to cause physical harm to another through force or violence. A pupil, in grade 6 or above, who commits physical assault in a school building, on school grounds, or at a school function must be separated from the general pupil population and is expelled from all public school districts within the state (Revised School Code 380.1311a(1)) until such time of reinstatement under Section 380.1311a(5).

C) Reinstatement of expelled pupils

A pupil who has been suspended or expelled based upon local school board policy may be reinstated under the regulations set forth in the local school board policy. A pupil in grade 6 or above who has been permanently expelled under state mandates may apply for reinstatement after 150 days to be reinstated after 180 days. A pupil in grade 5 or below who has been expelled due to possession of a dangerous weapon may apply for reinstatement after 60 days to be reinstated after 90 days. A pupil in grade 5 or below who has been expelled for committing arson or criminal sexual conduct in a school building or on school grounds may apply for reinstatement at any time to be reinstated 10 school days after expulsion.

Before reinstating an expelled pupil, the district school board may require the pupil and parent(s), or legal guardian, to agree in writing to specific conditions such as, but not limited to:

- a. A behavioral contract involving the pupil, the parent or legal guardian, and an outside agency.
- b. Participation in an anger management program or other appropriate counseling.
- c. Periodic progressive reviews.
- d. Immediate consequence for failure to abide by the conditions.

D) Using Virtual Course to Supplement Instruction

A mandatory expulsion pupil who has been required by state law to be expelled from all public schools may also be enrolled in a virtual learning course. The pupil must be receiving individualized instruction through a home-based program for a minimum of two one-hour periods of pupil instruction per week with a certified teacher. The virtual learning classes are supplemental in this case since the pupil's membership is generated in full through the two one-hour periods of one-on-one sessions. Note: If the pupil is enrolled in special education, the two one-hour periods of instruction must be nonconsecutive.

If the pupil is receiving instruction through an alternative education program under the mandatory expulsion requirement, and receives instruction in a classroom with other pupils, then the pupil membership would be pro-rated and the virtual learning classes could be counted toward that pupil's membership.

Note: The district may supplement the pupil's instruction with virtual courses but the virtual course cannot replace the required two one-hour sessions in order to count the pupil.

E) Statutory and Other References

State School Aid Act:
388.1606(4)(a)

Revised School Code:
380.1309 – 380.1313

Other:
Special Education Reference Guide

F) Questions and Answers

Special education pupil homebound by court

Q #1 A special education pupil was "homebound" by the court system because of behavioral problems. The pupil was not expelled from the school district; however, the court felt it was not a safe environment to have the pupil in a public school because of his behavior. The district wants to provide 2 one-hour sessions of pupil instruction per week to this pupil. May the district count this pupil for 1.0 FTE?

A #1 No. Only pupils expelled under the mandatory expulsion language in section 380.1311(2) and 380.1311a can qualify for a full FTE when receiving two hours of instruction per week. This pupil was not expelled from the district for any behavior that took place at the district or at a district function. The IEP may limit the number of hours that a pupil may attend the district but the IEP does not replace a state mandated expulsion. The pupil membership would be a prorated FTE.

Expelled pupil

- Q #2** The district expelled a pupil for threatening to blow up the school, making bombs, and threatening the school counselor's life. Section 5C, of the Pupil Accounting Manual, addresses a district providing home based instruction for pupils who were expelled under the state mandates. Does the fact that this pupil made those threats represent adequate grounds for the district to treat this situation as a state mandated expulsion?
- A #2** Yes, if the criteria in MCL 380.1211a(2) are met. Section 380.1311a(2) of the Revised School Code states that a pupil in grade 6 or above who commits a verbal assault, as defined by the school board policy, against an employee or volunteer of a school district or makes a bomb threat or similar threat at a school building, or other school property, or school related event, shall be suspended or expelled for a period of time as determined by the school board or its designee. Based on language in Section 1311a(3), if the pupil is permanently expelled as a result of school board defined verbal assault or due to a bomb threat, the pupil can qualify for a full FTE when provided two nonconsecutive one-hour periods of instruction per week.

Intermediate district provides program

- Q #3** May the intermediate school district or a local school district provide home-based instruction to several pupils who have been expelled under state mandatory expulsion by several districts throughout the surrounding area?
- A #3** Home-based instruction must be provided to the expelled pupil by the expelling district. The expelling district may contract with the intermediate school district or with a local school district to provide home-based instruction to pupils who have been expelled under MCL 380.1311(1) or 380.1311a. The instruction must be provided in a one-on-one setting and not in a group setting. However, it is the expelling district that counts the FTE for that pupil and the educating district would have to bill the expelling district.

School-of-Choice Pupil

- Q #4** The pupil was a resident of District A in September but moved to District B in January. The pupil completed the school year in District A as permitted under Section 6(6)(g) of the State School Aid Act (MCL 388.1606(6)(g)). The district suspended this pupil in March and again in May. This pupil would like to apply for school of choice enrollment for the upcoming year. Must District A enroll this pupil since the district counted him for membership purposes in the previous year? Or, can the district refuse enrollment based upon the pupil's prior record of having been suspended?
- A #4** District A counted the pupil for membership purposes in the previous fall because he was a resident pupil. District A permitted the pupil to complete that school year at the district and counted him without a release for the supplemental count day as is allowed under Section 6(6)(g) of the State School Aid Act. The pupil now resides in a different school district and must abide by all enrollment requirements as any other nonresident pupil. Section 105(9) permits District A the right to refuse enrollment to this pupil as he was suspended from a district within the last two years.