

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

October 13, 2021

**Re: Restorative Practices for Students**

Dear Michigan Public School Principals and Superintendents;

With the new school year underway, I write to remind you of the critical need for restorative practices in our schools, to explain the obligation educators have to implement those practices, and to provide some resources to help implement restorative practices at your school. As I write, parents, teachers, and students across Michigan are settling into their new back-to-school routines. After a year of disrupted learning last year, students and educators are excited to be face-to-face in the classroom again, but wary of the continued challenges posed by the COVID-19 pandemic.

Teaching in a pandemic pulled back the curtain on some of the many barriers to learning that so many students already were facing—a tumultuous home life, no access to the internet, housing and food insecurity. And the data confirm that students of color suffered significantly more than their peers as a result of the pandemic.

That's why, as students return to the classroom, I am asking you to double down on our shared commitment to stamping out those disparities with every tool we have—particularly restorative practices.

For our students, the stakes are high. As Michigan's chief law enforcement officer, I've seen firsthand the juvenile justice system and the lifelong impact that it can have on students. And, as educators, you know all too well how educational outcomes change once a student becomes involved in the criminal justice system.

I know we can do better. Over the past year, my office has worked with State Superintendent Dr. Michael Rice, the National Education Association (NEA), the Michigan Education Association (MEA), and other stakeholders to dig deep into the causes and impacts of disproportionate school suspension and expulsion rates and, relatedly, juvenile and adult incarceration rates. We worked to find ways that my office can partner with our schools, teachers and communities to raise awareness of this issue and be a resource for educators.

We're starting by raising awareness about the effect of disparate and excessive use of student suspensions and expulsions. This year, I led a coalition of attorneys general around the country in submitting two letters to the United States Department of Education, requesting that the Department issue guidance for school

districts to address the long history of racial disparities in the use of exclusionary discipline, which still exist today.<sup>i</sup> These letters also discussed related disparities in school discipline based on sex, disability, sexual orientation, and gender identity.

Those letters drove home another important point—*restorative practices work*. Exclusionary discipline can have life-long adverse impacts on students.<sup>ii</sup> But studies have shown that one of the most effective methods of reducing these disparities is the implementation of restorative justice programs and practices in schools.<sup>iii</sup>

The effectiveness of restorative practices has become so widely accepted that Michigan law now *requires* schools to consider restorative practices when it comes to student discipline. MCL 380.1310c requires schools to consider using restorative practices—i.e., “practices that emphasize repairing the harm to the victim and the school community caused by a pupil’s misconduct”—as “an alternative or in addition to suspension[s] or expulsion[s].”<sup>iv</sup> For example, the statute describes one type of restorative practice schools may utilize: “victim-offender conferences . . . 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.”<sup>v</sup> And the statute advises that “[r]estorative 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.”<sup>vi</sup>

The law also requires educators to think twice before suspending or expelling a student, which can have drastic consequences on the student’s education. MCL 380.1310d provides a list of specific factors that a school *must* consider in determining whether to suspend or expel a student.<sup>vii</sup> The seven factors to be considered are:

- (a) The pupil’s age.
- (b) The pupil’s disciplinary history.
- (c) Whether the pupil is a student with a disability.
- (d) The seriousness of the violation or behavior committed by the pupil.
- (e) Whether the violation or behavior committed by the pupil threatened the safety of any pupil or staff member.
- (f) **Whether restorative practices will be used to address the violation or behavior committed by the pupil.**
- (g) Whether a lesser intervention would properly address the violation or behavior committed by the pupil.<sup>viii</sup>

Under Michigan law, schools must start from the premise that a student will *not* be suspended or expelled more than 10 days. A school can overcome this presumption only if it “can demonstrate that it considered each of the factors.”<sup>ix</sup>

The law is not designed to take away flexibility from educators, and schools retain discretion in the method they use to consider the seven factors above. But schools must be able to demonstrate that they *have* considered the factors in reaching a decision.<sup>x</sup> And that means having restorative practices in place and available for consideration as the need arises.

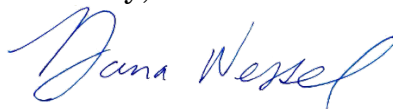
The purpose of these laws is clear—suspensions and expulsions should be reserved only for the most egregious behaviors.

To most of you, this information is nothing new and this letter will be a reminder to recommit to best practices. Whether you are just beginning to incorporate restorative practices at your school or already are well underway, I want to share some resources to help you be successful. [I've gathered some excellent tools you can use and put them on my website](#) at [mi.gov/ageducators](http://mi.gov/ageducators).

I would love to hear from you as you are implementing restorative practices in your schools. A few weeks ago, I visited Raupp Elementary School in Lincoln Park to learn about Lincoln Park Public Schools' Resilient Schools Project. The project supports student recovery in the wake of trauma and adversity. It gives students and teachers tools to prioritize students' social and emotional needs and set them up for success in the classroom and beyond. And it's already proven to be a tremendous success. If you have a success story to share with your restorative practices program, [I invite you to share it with my office](#) at [mi.gov/ageducators](http://mi.gov/ageducators). I'd love to come see the program in action.

Thank you for your continued service to your students and communities. I look forward to opportunities where we can work together to spotlight the critical work that you do each and every day to make a positive difference in the lives of the kids at your schools.

Sincerely,



Dana Nessel  
Attorney General

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<sup>i</sup> Letter to Secretary Dr. Miguel A. Cardona and Attorney General Merrick B. Garland from 23 State Attorneys General, dated May 24, 2021, available at [https://www.michigan.gov/documents/ag/School\\_Discipline\\_Multi-State\\_letter\\_Final\\_5.24.21\\_726121\\_7.pdf](https://www.michigan.gov/documents/ag/School_Discipline_Multi-State_letter_Final_5.24.21_726121_7.pdf); Letter to Suzanne B Goldberg, Acting Assistant Secretary for Civil Rights, U.S. Dep't of Educ., from 15 State Attorneys General, dated July 23, 2021, available at

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[https://www.michigan.gov/documents/ag/School\\_Discipline\\_Multi-State\\_letter\\_2\\_Response\\_to\\_RFI\\_final\\_730967\\_7.pdf](https://www.michigan.gov/documents/ag/School_Discipline_Multi-State_letter_2_Response_to_RFI_final_730967_7.pdf).

ii See Andrew Bacher-Hicks, et al., *The School to Prison Pipeline: Long-Run Impacts of School Suspensions on Adult Crime*, NATIONAL BUREAU OF ECONOMIC RESEARCH (2019); Russell W. Rumberger & Daniel J. Losen, *The Hidden Costs of California's Harsh School Discipline: And the Localized Economic Benefits From Suspending Fewer High School Students* (Mar. 8, 2017); Daniel J. Losen & Paul Martinez, *Lost Opportunities: How Disparate School Discipline Continues to Drive Differences in the Opportunity to Learn* (Oct. 2020).

iii See Catherin H. Augustine, et al., *Can Restorative Practices Improve School Climate and Curb Suspensions? An Evaluation of the Impact of Restorative Practices in a Mid-Sized Urban School District* (2018); Jason P. Nance, *Over-Disciplining Students, Racial Bias, and the School-to-Prison Pipeline*, 50 U. RICH. L. REV. 1063, 1070-71 (2016); Kent McIntosh, et al., *Education not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline*, 5:2 JOURNAL OF APPLIED RSCH. ON CHILD.: INFO. POLICY FOR CHILD. AT RISK 11-13 (2014).

iv *Id.* § 1310c(1), (3)(b).

v *Id.* § 1310c(2).

vi *Id.* (emphasis added).

vii MCL 380.1310d requires consideration of the seven factors for suspension or expulsions of a student pursuant to MCL 380.1310, 380.1311, 380.1311(a). MCL 380.1310d(1).

viii *Id.* (emphasis added).

ix *Id.* § 1310d(2). Students suspended or expelled for possessing a firearm in a weapon-free school zone under MCL 380.1311(2) are not entitled to this presumption. *Id.* § 1310d(3).

x *Id.* § 1310d(2).