

Last year, Michigan passed laws for schools that transition from “Zero Tolerance” to “Restorative Practices”. These changes are significant and are the first major change to student discipline procedures since the implementation of zero tolerance in the 1990s.

On August 1, 2017 changes to the Revised School Code became effective that significantly impact the manner in which public schools in Michigan are expected to handle suspensions and expulsions. These changes now require the use of restorative practices and the consideration of specific factors before imposing a suspension or expulsion on a student.

Zero Tolerance

Under the previous State law, zero tolerance mandated expulsion for students who:

- Knowingly possessed a dangerous weapon in a weapon-free school zone for use as a weapon;
- Committed arson on school grounds;
- Committed criminal sexual conduct in a school building or on school grounds; or
- Physically assaulted a school employee, volunteer or contractor.

Under the new State law, mandatory expulsion is only applied for students who possess a firearm (as opposed to other dangerous weapons) in a weapon-free school zone.

In addition, many school districts had developed their own zero tolerance policies that implemented automatically long-term suspended or expelled students for various acts of serious misconduct, such as fighting or drug offenses. As long as schools applied these policies evenhandedly so that they did not raise discrimination concerns and complied with special education laws, the schools’ disciplinary decisions were difficult to successfully challenge.

This has also changed under the new State law. All suspensions and expulsions (outside of possession of a firearm in a weapon-free school zone) require school officials to consider all of the following factors (1310d) before suspending or expelling a student:

- The student’s age;
- The student’s disciplinary history;
- Whether the student has a disability;
- The seriousness of the student’s behavior;
- Whether the behavior threatened the safety of students or staff;
- Whether restorative practices will be used to address the situation; and
- Whether the situation may be properly addressed with lesser intervention

The “Rebuttable Presumption”

The new laws also introduce a rebuttable presumption into the Revised School Code. This standard presumes that any expulsion or suspension over 10 days is not justified. Districts can still issue a suspension or expulsion over 10 days once justification is demonstrated by school officials through the consideration of the previous 7 factors (1310d)(age, disciplinary history, etc.).

Additionally, the new law creates a rebuttal presumption that an expulsion for possession of a dangerous weapon is not justified if both of the following are met:

- The school board or its designee determines in writing that at least one of the exculpatory factors listed below has been established in a clear and convincing manner, and
 - 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 person for 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.
- The student has no history of suspension or expulsion

Restorative Practices

The changes to the Revised School Code also mandate that school officials consider using restorative practices as an alternative or in addition to suspension or expulsion. Restorative practices are practices that emphasize repairing the harm to the victim and the school community, and may include requiring the offending student to “apologize; participate in community service, restoration, or counseling; or pay restitution.” Restorative practices may also include victim-offender conferences where the victim, offender, student advocates, and other members of the school community work together to resolve the issue and set consequences for the offender’s behavior. The selected consequences must be incorporated into an agreement that sets time limits for completion of the consequences and is signed by all participants.

Under the new laws, “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.” Like the 1310d factors, however, school officials are given the sole discretion over the method used in consideration of these practices. Indeed, during the legislative discussion of this new law, it was noted that there is no mandate that restorative practices actually be used; only that their use be considered. This is important because, in some circumstances, restorative practices may not be lawful or appropriate. For instance, the Office of Civil Rights has made it clear that school officials should not force victims of harassment to meet with their offenders, so that type of restorative practice would not be appropriate in those cases.

What does this mean for us?

In Eastpointe Community Schools, we have already adopted new Board policies and administrative procedures that are aligned to the new laws. Since we have already been using the existing flexibility allowed in the previous zero tolerance laws and successfully implemented Restorative Practices in the district, some portions of the new law will not require significant changes to our practices.

The most significant deviations from previous practice will likely appear in (1) documenting the consideration of the seven factors, (2) the rebuttable presumption, (3) how we define expulsion, and (4) incidents that will be required to go before the Board of Education.

1. ALL suspensions from school must include documentation of the consideration of the seven factors. The documentation must be completed in writing (sample form included below) with adequate comments/notes so that, if the suspension is challenged at a later date, the administrator could justify their decision.
2. Beginning with the presumption that any expulsion or suspension over 10 days is not justified requires administrators to demonstrate otherwise using the 1310d factors. As administrators prepare for discipline hearings with the Board of Education or hearing officer, they should consider the seven factors and convincingly present a justification that an expulsion or suspension over 10 days is warranted.
3. The new law defines 'expulsion as a suspension of 60 days or more'. This definition now creates an expulsion window that is between 60 and 180 school days. This change will require administrative recommendations to the Board or hearing officer to include a recommendation for the length of an expulsion between 60 and 180 days of school.
4. As we have always done, our own district policies clearly outline serious disciplinary offenses (outside of State mandated offenses) that require a hearing with the Board of Education. However, now that State law only requires mandatory expulsion for possession a firearm in a weapon-free school, administrators will use the seven factors to make individualized determinations about which incidents warrant a hearing with the Board of Education, in line with Board policy.



EASTPOINTE COMMUNITY SCHOOLS

STUDENT DISCIPLINE MITIGATING FACTORS CHECKLIST



Student Name: _____

Grade: _____

Incident/Misconduct: _____

Date(s) of Incident/Misconduct: _____

Discipline Recommended: _____

Factors for Consideration:	Considered: (Check box)	Comments (Optional)
1. Student's age		
2. Student's disciplinary history		
3. Does student have a disability?		
4. Seriousness of violation		
5. Did the violation threaten the safety of any pupil or staff member?		
6. Will Restorative Practices be used to address the violation?		
7. Does a lesser intervention address the violation?		

After consideration of the factors above, discipline to be imposed:

Administrator

Date