
Pending Restorative Justice Bills Will, If Enacted, Alter Suspension and Expulsion Practices

By Joseph B. Urban / Nov 01, 2016

Restorative Justice programs are increasingly being seen as an alternative to "zero tolerance" school discipline processes. Restorative Justice is an approach to discipline that focuses on repairing harm through inclusive processes that engage all stakeholders. Implemented well, Restorative Justice shifts the focus of discipline from punishment to learning and from the individual to the community. [Click here](#) to learn more about how to practice Restorative Justice in schools and for attribution of the Restorative Justice description.

Michigan had, along with many other states, previously enacted "zero tolerance" legislation that mandated expulsion for such activities as possession of a dangerous weapon on school property, commission of criminal sexual conduct, arson, verbal assaults and making bomb threats. The zero tolerance legislation resulted in unintended consequences for schools and reports of draconian disciplinary results.

A pair of bills that have been passed in the Michigan House of Representatives would, if enacted, fundamentally alter the way that Michigan public schools and public school academies administer student discipline.

To cure the perceived issues created by mandated "zero tolerance" school discipline policies, the pending bills require school districts initiating suspensions or expulsion to take into consideration the pupil's age, disciplinary history, whether the student has a disability, the seriousness of the violation or the behavior of the pupil, whether the violation or behavior threatened the safety of a staff member or pupil, whether "restorative practices" will be used to address the behavior or violation, whether a lesser intervention would address the behavior or violation.

"Restorative Practices" are defined as including victim-offender conferences that are initiated by the victim and that provide an opportunity for the offender to accept responsibility for the harm caused to those affected by the misconduct or provide an opportunity for those affected by the misconduct to participate in setting consequences to repair the harm. The attendees at the conference, known as the Restorative Justice Panel, may require the pupil offender to do one or more of the following: apologize, participation in community service, restoration or counseling, or pay restitution. The consequences arrived at by the Restorative Justice Panel shall be incorporated into an agreement, signed by all parties, that sets time limits for completion of the consequence(s).

Under the pending bills, school districts are urged to use Restorative Practices as 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.

The bills further would establish a "rebuttable presumption" in most cases of student discipline (with the exception of possession of a firearm in a Weapons Free School Zone) that suspension or expulsion is not warranted. The bills are tie-barred to House Bills 5693, 5694 and 5695, which amend MCL 380.1310 (mandatory discipline for student who commits physical assault), 380.1311 (mandatory expulsion for student who possesses a dangerous weapon, commits criminal sexual conduct or commits arson) and 380.1311a (mandatory discipline for student who engages in verbal assault) to require consideration of Restorative Justice practices.

As the enactment of the bills would significantly alter the landscape in which school discipline is administered, we will monitor their progress and provide updates through e-alerts.

If you have any questions about Restorative Justice, please contact Joseph B. Urban at jurban@clarkhill.com | (248) 988-1829, or another member of Clark Hill's Education Practice Group.