

HOUSE BILL No. 6024

June 16, 2004, Introduced by Rep. Lipsey and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1312 (MCL 380.1312), as amended by 2000 PA
461, and by adding sections 1312a and 1531f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1312. (1) As used in this section, "corporal
2 punishment" means the deliberate infliction of physical pain by
3 hitting, paddling, spanking, slapping, or any other physical
4 force used as a means of discipline.

5 (2) Corporal punishment does not include physical pain caused
6 by reasonable physical activities associated with athletic
7 training.

8 (3) A person employed by or engaged as a volunteer or
9 contractor by a local or intermediate school board or public
10 school academy shall not inflict or cause to be inflicted

1 corporal punishment upon any pupil under any circumstances.

2 (4) A person employed by or engaged as a volunteer or
3 contractor by a local or intermediate school board or public
4 school academy may use reasonable physical force upon a pupil
5 **only** as necessary ~~to maintain order and control in a school or~~
6 ~~school-related setting for the purpose of providing an~~
7 ~~environment conducive to safety and learning. In maintaining~~
8 ~~that order and control, the person may use physical force upon a~~
9 ~~pupil as may be necessary for 1 or more of the following:~~

10 ~~—— (a) To restrain or remove a pupil whose behavior is~~
11 ~~interfering with the orderly exercise and performance of school~~
12 ~~district or public school academy functions within a school or at~~
13 ~~a school-related activity, if that pupil has refused to comply~~
14 ~~with a request to refrain from further disruptive acts.~~

15 ~~—— (b) For self-defense or the defense of another.~~

16 ~~—— (c) To prevent a pupil from inflicting harm on himself or~~
17 ~~herself.~~

18 ~~—— (d) To quell a disturbance that threatens physical injury to~~
19 ~~any person.~~

20 ~~—— (e) To obtain possession of a weapon or other dangerous~~
21 ~~object upon or within the control of a pupil.~~

22 ~~—— (f) To protect property~~ **in an emergency situation when a**
23 **pupil's behavior causes a threat of imminent, serious physical**
24 **harm to the pupil or others and the use of physical force is**
25 **necessary to ensure the safety of the pupil or others.**

26 (5) ~~A person employed by or engaged as a volunteer or~~
27 ~~contractor by a local or intermediate school board or public~~

~~1 school academy who exercises necessary reasonable physical force~~
~~2 upon a pupil, or upon another person of school age in a~~
~~3 school-related setting, as described in subsection (4) is not~~
~~4 liable in a civil action for damages arising from the use of that~~
~~5 physical force and is presumed not to have violated~~
~~6 subsection (3) by the use of that physical force. This~~
~~7 subsection~~ **section** does not alter or limit a person's immunity
8 from liability provided under 1964 PA 170, MCL 691.1401 to
9 ~~691.1415~~ **691.1419**.

10 (6) A person who willfully or through gross negligence
11 violates subsection (3) or who willfully or through gross
12 negligence violates subsection (4) may be appropriately
13 disciplined by his or her school board or public school academy.
14 This subsection does not limit a school board's or public school
15 academy's authority to discipline an employee for a violation of
16 its own policies.

17 (7) In determining whether an employee, volunteer, or
18 contractor has acted in accordance with subsection (4), deference
19 shall be given to reasonable good-faith judgments made by that
20 person **if his or her actions are consistent with a comprehensive**
21 **plan regarding the use of emergency interventions that has been**
22 **adopted and implemented under subsection (8) by the governing**
23 **board of the local or intermediate school district or public**
24 **school academy.**

25 (8) A local or intermediate school district or a public
26 school academy shall develop and implement a code of student
27 conduct **and a comprehensive plan regarding the use of emergency**

1 **interventions** and shall enforce **and comply with** its provisions
2 with regard to pupil misconduct in a classroom, elsewhere on
3 school premises, on a school bus or other school-related vehicle,
4 or at a school sponsored activity or event whether or not it is
5 held on school premises.

6 (9) The department shall develop a model list of alternatives
7 to the use of corporal punishment. This model list shall be
8 developed in consultation with organizations that represent the
9 interests of teachers, school employees, school boards, school
10 administrators, pupils, parents, and child advocates, plus any
11 other organization that the state board of education may wish to
12 consult. The department shall send this model list to each
13 school district, public school academy, and intermediate school
14 district in the state and to each nonpublic school in the state
15 that requests it. A local or intermediate school board or public
16 school academy shall approve and cause to be distributed to each
17 employee, volunteer, and contractor a list of alternatives to the
18 use of corporal punishment. Upon request, the department of
19 education shall provide assistance to schools in the development
20 of programs and materials to implement this section.

21 (10) Any resolution, bylaw, rule, policy, ordinance, or other
22 authority permitting corporal punishment is void.

23 **Sec. 1312a. (1) A school employee or school official shall**
24 **not use or condone the use of, and the governing board of a**
25 **school district, intermediate school district, public school**
26 **academy, or nonpublic school shall impose appropriate discipline**
27 **on a school employee or official who uses or condones the use of,**

1 any of the following methods of treating a pupil:

2 (a) Physical restraint. Physical restraint includes any
3 touching or holding of a pupil by another person causing a
4 personal restriction that immobilizes or reduces the ability of a
5 pupil's freedom of movement and that poses a threat to the
6 functioning of the pupil's respiratory system or ability to
7 speak, including, but not limited to, prone restraint and basket
8 hold restraints. Physical restraint does not include any of the
9 following:

10 (i) A brief, gentle, and noncoercive holding of a pupil's
11 hand to escort the pupil safely to another location.

12 (ii) A device, such as an orthopedically prescribed device,
13 surgical dressings or bandages, a protective helmet, or a seat
14 belt used for transportation, that involves the physical holding
15 of an individual to permit the individual to participate in
16 activities without the risk of physical harm to the individual.

17 (b) Chemical restraint. Chemical restraint includes any drug
18 or medication that is used as a restraint to control behavior or
19 restrict an individual's freedom of movement. Chemical restraint
20 does not include use of a drug or medication that is standard
21 treatment for the individual's medical or psychiatric condition.

22 (c) Mechanical restraint. Mechanical restraint includes any
23 device, material, or equipment attached or adjacent to an
24 individual's body that he or she cannot easily remove and that
25 restricts freedom of movement or normal access to the
26 individual's body. Mechanical restraint does not include a
27 device, such as an orthopedically prescribed device, surgical

1 dressings or bandages, or a protective helmet, that involves the
2 physical restricting of an individual to permit the individual to
3 participate in activities without the risk of physical harm to
4 the individual.

5 (d) Locked seclusion. Locked seclusion includes a behavior
6 control technique involving confinement of an individual alone in
7 an area from which the individual is physically prevented from
8 leaving. Locked seclusion does not include a time out if the
9 time out is used as a behavior management technique that is part
10 of a pupil's behavior intervention plan and involves the
11 temporary separation from other pupils for the purpose of
12 regaining self-control in a setting that has greater than 50
13 square feet of space, that is not locked, from which the pupil is
14 not physically or otherwise prevented from leaving, and where
15 staff are fully visible and accessible to the pupil.

16 (2) All pupils have the right to be treated with dignity and
17 respect. All pupils, regardless of possible physical, mental, or
18 emotional impairment, have the right to be provided with an
19 appropriate, safe, and healthy educational environment. Every
20 pupil attending a public school or nonpublic school is entitled
21 to be free from mental and physical abuse and from physical,
22 mechanical, and chemical restraints, unless specifically allowed
23 under this section.

24 (3) A person employed by or engaged as a volunteer or
25 contractor by a local or intermediate school board, public school
26 academy, or nonpublic school shall use emergency intervention
27 techniques to prevent an emergency only in instances in which a

1 pupil's unpredictable, spontaneous behavior causes a threat of
2 serious, imminent physical harm to the pupil or others and cannot
3 be immediately prevented by any other less restrictive measure
4 because the less restrictive measure has proved to be ineffective
5 in that instance. Emergency intervention techniques include the
6 use of physical restraint, but physical restraint shall only be
7 used on a pupil in an emergency to control unpredictable,
8 spontaneous behavior by that pupil that poses a clear and present
9 danger of serious physical harm to that pupil or others in the
10 school community and cannot be immediately prevented by a
11 response less restrictive than the temporary application of
12 physical restraint. All of the following also apply to emergency
13 interventions:

14 (a) In an emergency intervention, school personnel shall only
15 use such reasonable force or emergency intervention techniques as
16 are necessary to protect the pupil or another person from
17 imminent, serious physical harm. The safety and comfort of the
18 pupil shall be maintained during the use of the emergency
19 intervention. The intervention shall be discontinued as soon as
20 the threat to the safety of the pupil or another no longer
21 exists. An intervention should at all times be carefully applied
22 and may be eased by degrees as the pupil calms down. The pupil
23 should be advised throughout that the intervention will cease
24 when he or she no longer poses a threat to himself, herself, or
25 others. School personnel should use a calm and measured
26 approach, and should never give the impression that they have
27 lost their tempers, or are acting out of anger or frustration, or

1 to punish the pupil. An emergency intervention shall be
2 discontinued when the emergency no longer exists.

3 (b) An emergency intervention that is over 30 minutes in
4 duration is considered an extended intervention. An extended
5 intervention shall only be used in accordance with the order of a
6 physician or a registered nurse. All of the following apply to
7 an extended intervention:

8 (i) An order for use of an emergency intervention shall not
9 be written as a standing order or on an as-needed basis.

10 (ii) The pupil shall be continually monitored face-to-face by
11 an assigned, trained staff member who is not otherwise involved
12 in the administration of the extended intervention, and the
13 condition of the pupil shall continually be assessed, monitored,
14 and reevaluated. If, at any time during a physical restraint,
15 the pupil demonstrates physical distress, the pupil shall be
16 released from the restraint immediately, and school personnel
17 shall take appropriate steps to seek medical assistance.

18 (iii) Within 30 minutes after the initiation of the extended
19 intervention, school personnel shall ensure that a physician or
20 other licensed independent practitioner sees the pupil and
21 evaluates the need for the extended intervention.

22 (c) An emergency intervention should not be used on a
23 particular pupil until after consultation of and authorization
24 from appropriate medical personnel to advise whether there are
25 medical or health contraindications for the use of emergency
26 intervention on that pupil.

27 (d) An emergency intervention shall be applied only by

1 personnel who have participated in the training under subsection
2 (4) and have demonstrated competence in the proper use of these
3 procedures as well as alternatives to these procedures.

4 (e) An emergency intervention shall not be used unless a
5 parent or guardian has given advance permission for the use of
6 that particular means of intervention and it is included in the
7 pupil's behavior intervention plan. Prior to giving this
8 permission, a parent or guardian must be provided with a copy of
9 the school's written policy on the use of emergency
10 interventions.

11 (4) All school personnel likely to perform emergency
12 interventions, including, but not limited to, teachers, teacher's
13 aides, and school administrators, shall be trained in the use of
14 emergency interventions. All of the following apply to this
15 training:

16 (a) The training shall take place within the first 30 days of
17 every school year or within 30 days of hiring for staff hired
18 during the school year.

19 (b) Initial training of school personnel shall include at
20 least 24 hours of in-depth training. The training shall cover at
21 least all of the following:

22 (i) The dangers of using physical restraint, including the
23 prohibition of any positions and techniques that threaten or
24 limit the functioning of the subject's respiratory system or
25 ability to speak.

26 (ii) Prevention, including positive behavior supports and
27 relationship building, and de-escalation techniques.

(iii) Alternatives to restraint.

(iv) Proper use of time out.

(v) Simulated experience of being placed in a restraint.

(vi) Demonstration by participants of proficiency in administering physical restraints.

(vii) Proper method of documentation for use of emergency interventions.

(viii) Cardiopulmonary resuscitation and first aid.

(c) Returning school personnel who have participated in the initial training under subdivision (b) shall attend annual refresher training on physical restraint, CPR, and first aid. The annual refresher training shall be at least 8 hours in duration.

(d) The department shall identify appropriate nationally recognized training providers and an appropriate training curriculum for all public and nonpublic schools within 30 days after the effective date of this section.

(5) A school employee or school official shall not use restraint as a behavior support technique or as a response to property destruction. Restraint does not include any of the following:

(a) Brief, gentle, and noncoercive holding of a pupil's hand to escort the pupil safely to another location.

(b) Seat belts or other safety equipment that secures pupils during transportation.

(c) Medically prescribed adaptive equipment.

(6) A school employee or school official may use time out

1 only in a lighted, ventilated space free of objects and fixtures
2 with which a pupil could cause bodily harm and only if the use of
3 time out does not deny a pupil sleep, food, water, shelter,
4 bedding, physical comfort, or the use of a bathroom. All of the
5 following apply to use of time out:

6 (a) A pupil must enter time out voluntarily. Physical force,
7 threat of physical force, or other threats may not be used to
8 place a pupil in time out.

9 (b) Time out may not exceed 15 minutes in length.

10 (c) Time out should be used in conjunction with positive
11 behavior supports, and the use of time out should be included in
12 the pupil's individualized education program or the pupil's
13 behavior intervention plan if it is utilized on a recurrent basis
14 to increase or decrease a targeted behavior.

15 (d) The use of time out shall not be implemented in a fashion
16 that precludes the ability of the pupil to be involved in and
17 progress in the general curriculum and advance the opportunity
18 toward attaining the annual goals specified in the pupil's
19 individualized education plan.

20 (7) Training on the use of time out shall be provided for
21 school employees, volunteers, or independent contractors and
22 shall be provided according to the following requirements:

23 (a) Training for current staff shall occur not later than 90
24 days after the department identifies appropriate training
25 providers.

26 (b) Newly identified personnel called upon to implement time
27 out based on requirements established in a pupil's individualized

1 education plan or behavior intervention plan shall be provided
2 with the training in the use of time out within 30 days of being
3 assigned the responsibility for time out.

4 (c) Training on the use of time out shall be provided as part
5 of a program that addresses a full continuum of positive
6 behavioral intervention strategies, and shall address the impact
7 of time out on the ability of the pupil to be involved in and
8 progress in the general curriculum and advance appropriately
9 toward attaining the annual goals specified in the individualized
10 education plan.

11 (d) All personnel involved in the training shall receive
12 instruction in current professionally accepted practices and
13 standards regarding behavior management and the use of time out.
14 Necessary documentation or data collection regarding the use of
15 time out, if any, shall be addressed in the pupil's
16 individualized education program or the pupil's behavior
17 intervention plan. The pupil's individualized educational
18 planning committee shall use any collected data to judge the
19 effectiveness of the intervention and provide a basis for making
20 determinations regarding its continued use.

21 (8) A school employee or volunteer involved in an emergency
22 intervention or time out shall report the emergency intervention
23 or time out as follows and in accordance with subsections (9) and
24 (10):

25 (a) Verbal notification to the pupil's parent or guardian as
26 soon as possible.

27 (b) Written notification within 24 hours to the following

1 individuals:

2 (i) The pupil's parent or guardian.

3 (ii) The school administrator.

4 (iii) The pupil's residential care provider, if applicable.

5 (iv) The department.

6 (9) If an emergency intervention is an extended intervention
7 or if serious injury occurs as a result of an emergency
8 intervention or time out, the school administrator in charge of
9 the pupil's school shall provide the department and the
10 designated protection and advocacy system for the state with
11 written documentation of the incident, and shall keep that
12 information confidential in accordance with state and federal
13 privacy protections. As used in this subsection, "serious
14 injury" includes any significant impairment to the physical
15 condition of the pupil as determined by qualified medical
16 personnel, including, but not limited to, burns, lacerations,
17 bone fractures, substantial hematoma, and injuries to internal
18 organs.

19 (10) Each school employee or volunteer involved in an
20 incident in which an emergency intervention is used shall
21 independently submit written documentation of the incident. Each
22 report shall be placed in the pupil's file. The written
23 documentation and notification shall include all of the
24 following:

25 (a) Name of the pupil.

26 (b) Name of all personnel involved in emergency
27 intervention.

1 (c) Type of emergency intervention used.

2 (d) Date of intervention and the time intervention began and
3 time it ended.

4 (e) Description of events leading to emergency intervention,
5 including the behavior that prompted the intervention.

6 (f) Efforts made to de-escalate the situation and
7 alternatives to intervention that were implemented prior to the
8 intervention.

9 (g) Information documenting parent contact and notification
10 of intervention.

11 (h) Name of individual writing report.

12 (i) For pupils receiving special education services,
13 documentation that an individualized education program meeting
14 was held to address the pupil's behavioral needs after the use of
15 the emergency intervention.

16 (11) If behavior interventions are used on a pupil, they
17 should be used in consideration of the pupil's physical freedom
18 and social interaction, and administered in a way that respects
19 human dignity and personal privacy and that ensures a pupil's
20 right to be placed in the least restrictive educational
21 environment. A person employed by or engaged as a volunteer or
22 contractor by a public school shall use positive behavior
23 interventions as recommended by the department.

24 (12) The governing board of a public or nonpublic school
25 shall ensure that all reports of incidents of emergency
26 intervention are submitted to the department every month. After
27 personal information has been removed, the department shall post

1 the reports on the department's website. The department shall
2 determine if additional action on the part of the school is
3 warranted, and if so, shall notify the school of any required
4 actions within 30 calendar days of receipt of the report. In
5 addition, the monthly reports shall be submitted to the governing
6 board and the designated protection and advocacy system.

7 (13) The state board and school districts, intermediate
8 school districts, and public school academies are encouraged to
9 create policies and procedures governing the use of behavior
10 interventions consistent with this section.

11 (14) This section shall not be construed to limit the
12 protection afforded to pupils under other state or federal law,
13 including those laws that provide for the rights of pupils who
14 have been found eligible to receive special education services.

15 (15) As used in this section, "nonpublic school" means a
16 nonpublic school that receives state funding for auxiliary
17 services.

18 Sec. 1531f. In addition to other requirements for a
19 teaching certificate, an initial teaching certificate shall not
20 be issued to an individual unless the individual has received
21 training meeting the requirements of section 1312a(4).

22 Enacting section 1. This amendatory act shall be known as
23 the Michael Renner Lewis, III, law.