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MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP May 16, 2007

LEGAL UPDATE

**(Covering the time period from
March 22, 2007 to May 15, 2007)**

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MICHIGAN SAFE SCHOOLS INITIATIVE

May 16, 2007

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SAFE SCHOOLS CASE LAW UPDATE

The following case in our jurisdiction is summarized because of its potential applicability and relevance to Michigan Safe Schools' law.

Student on Student Sexual Harassment – No School District Liability

Peer v. Porterfield, 2006 WL 3898263 (W.D. Mich., January 8, 2007)

Facts:

Joshua Porterfield, an eighth grade student at Mesick Elementary School, of the Mesick Consolidated School District (South of Traverse City), was required to participate in a mandatory enrichment class called "Careers Class," in which each eighth grade student was required to spend time in another classroom "working" for a teacher in an unpaid capacity. All eighth grade students were required to participate in this class regardless of their academic record and without any type of screening.

Porterfield was assigned to a kindergarten class taught by one of the defendants, Melissa Ford. On April 22, 2004, a paraprofessional teacher's aide saw Jane Doe, a minor, running out of the bathroom crying. The kindergartner told Ms. Ford that Porterfield had taken her into the bathroom, made her pull down her underwear, and touched her "privates." Porterfield was immediately suspended and subsequently expelled from school.

After the incident in question, investigations conducted by Ms. Ford and the sheriff's department uncovered allegations that Porter had sexually molested six other kindergarten girls on April 19th, 20th, or 22nd, 2004. It was undisputed that no agent or employee of the Mesick School District knew of the assaults prior to the episode with Jane Doe.

Porterfield's prior misconduct consisted of four different "disciplinary actions, including: (1) he had been referred to the middle school office after a third incident of being tardy; (2) he had received two "bus misconduct reports" for not keeping a bouncing ball in his backpack, for leaving his assigned seat, arguing with the bus driver, and "flipping off" the driver after being dropped off at his bus stop; (3) he was referred to the office for "bullying" after he hit and kicked a fellow student during an argument over a chair; and (4) he had been referred to the office for a minor "level 1" incident of "inappropriate behavior" in band class.

Issues:

- (1) Can a student's poor academic record and previous non-sexual incidents of misconduct constitute sufficient notice to a school district of a substantial danger of student-on-student harassment under Title IX?
- (2) Did the school district's failure to adequately screen eighth graders for the "Careers Class" constitute "deliberate indifference" to sexual abuse under section 1983?

Holdings:

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- (1) Porterfield's prior disciplinary record or actions did not reveal that a "severe, pervasive, and objectively offensive situation" existed prior to Porterfield's sexual assault of Jane Doe as required to sustain an action under Title IX.
- (2) There was no evidence to suggest that the school district had an "official policy" or "custom" regarding the screening of eighth graders for the "Careers Class" and the school district was not aware of any prior actions which would cause a school employee to infer that the class created a danger to kindergartners.

Reasoning:

Liability under Title IX only arises when an appropriate person has actual knowledge of sexual harassment and refuses to remedy it.

According to U.S. Magistrate Judge Scoville, the Plaintiff argued, in essence, that the school district should have been aware of the general risk for abuse of kindergartners by eighth graders, particularly in light of the school's failure to screen the eighth graders or train them appropriately. However, **mere negligence is not the standard for a Title IX claim. Rather, "actual knowledge" is required.** The previous non-sexual conduct by Porterfield was not sufficient to place the school district on notice of a "substantial danger of student-on-student harassment," as required to state a claim under Title IX.

In addition, Plaintiff's Title IX claim failed on a second and independent ground since Plaintiff could not prove that "an appropriate person" had actual knowledge of a serious threat of sexual assault. In this case, the school principal would have had to know that Porterfield posed a threat of sexual assault to the female kindergarten students.

Finally, the **school district's actions** after it became aware of Porterfield's sexual assault did not constitute **deliberate indifference**. Indeed, Magistrate Judge Scoville stated that it would be "difficult to conceive a more forceful and appropriate response by school officials."

Liability under Section 1983 can be found if the school district's official "policy" or "custom" was the "moving force" behind the injury caused by the sexual assault.

Magistrate Judge Scoville found that there was no evidence that the "Careers Class" was driven by official school district policy. Indeed, the record did not establish that the program was known to the governing school board, let alone approved by the board or any other authoritative source. Since the teacher in charge of the program did not have the necessary final policymaking authority, the Court dismissed Plaintiff's claim that the school district had adopted a formal policy regarding the screening of eighth graders for its "Careers Class." Further, the Magistrate Judge found that there was no evidence to suggest that there was a "custom" of screening or supervision policies that was uniformly followed during the seven-year period in which the Careers Class was offered to the eighth graders. Even if the school district had formally adopted a policy, Magistrate Judge Scoville found that, as in the Title IX claim, the plaintiff could not establish that there was "deliberate indifference" to known or obvious consequences of the "policy."

PROPOSED LEGISLATION

Fireworks Safety on Government Property

House Bill 4691, introduced on May 1, 2007 by Reps. Schuitmaker, Angerer, Elsenheimer, Farrah, Spade, Hammon, Hildenbrand and Moss and referred to the Committee on Regulatory Reform.

The legislation would be known as the "Michigan Fireworks Safety Act," and is designed to revise, consolidate, and codify the existing laws relating to fireworks. Specifically, the legislation regulates the purchase, possession, sale, and use of fireworks and provides penalties and remedies for violations of its provisions. The legislation is designed to enhance fireworks safety by, *inter alia*, regulating the discharge or use of fireworks on various types of property, including public property, school property, and church property.

Under the proposed Bill, a person who ignites, discharges, or uses consumer fireworks on school property without the school's express permission is guilty of a civil infraction and subject to a civil fine of not more than \$500.00. A person who commits a second or subsequent violation within 5 years of a prior violation is guilty of a misdemeanor punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000.00, or both.

ENACTED LEGISLATION

There has been no recent amendments to statutes regarding school safety since last Legal Update March 21, 2007.

Purposes of Reporting Requirements

In the wake of the recent massacre at Virginia Tech, school districts and other governmental entities are reminded of their obligations to report violent crime under existing Michigan statutes. Anticipated litigation in Virginia is expected due to the failure of intergovernmental mutual reporting of knowledge of the mental instability involving the perpetrator. Michigan's school crime reporting requirements are intended to:

- "[h]elp policymakers and program designers at the local and state levels develop appropriate prevention and intervention programs,"
- "[p]rovide the continuous assessment tools needed for revising and refining school safety programs,"
- "[a]ssist schools and school districts to identify the most pressing safety issues confronting their school communities, to direct resources appropriately, and to enhance campus safety through prevention and intervention strategies," and to,
- "foster the creation of partnerships among schools, school districts, state agencies, communities, law enforcement and the media to prevent violence." MCL 380.1310a(a)-(d).

The following statutes address key mutual reporting requirements as they relate to school and safety:

Local Schools Reporting to Law Enforcement

Under Public Act 102 of 1999, school districts are required to immediately report to the appropriate law enforcement agencies any of the reportable incidents listed in the Statewide School Safety Information

Policy (“SSSIP”). MCL 380.1308(2). As noted in the SSSIP, the list of reportable incidents and the procedures to be followed when such incidents occur can be found in Michigan’s School Safety Response Guide. While Michigan’s School Safety Response Guide is currently subject to litigation, the 22 types of reportable incidents listed within the guide are arguably reportable incidents under Michigan law. The SSSIP also provides a sample agreement for local communities to enter into regarding the sharing of school safety information. *A copy of the sample School Safety Information Policy and Agreement are attached.*

Local Schools Reporting to State

At least annually, each school board must submit to the State Superintendent of Public Instruction a report stating the number of pupils expelled from the school district during the preceding school year, and the incidents of crime occurring at schools within the school district. MCL 380.1310a(1)-(2). Types of incidents that must be reported by a school district include crime involving physical violence, gang-related activity, illegal possession of a controlled substance, or controlled substance analogue, or other intoxicant, trespassing, and property crimes, including, but not limited to, theft and vandalism. MCL 380.1310a(2).

Local Schools Reporting to Parents

In addition to the above, each school building is required to collect on a weekly basis the information required for the report and provide the information within seven (7) days upon request by anyone. At least annually, school boards must make a copy of the most recent report available to the parent or legal guardian of each pupil enrolled in the school district. MCL 380.1310a(3).

Law Enforcement Reporting to Schools

Michigan statutes also impose reporting requirements on local law enforcement agencies, prosecutors, and the courts. Under Section 1308 of the Revised School Code, local law enforcement agencies with jurisdiction over a school building in a school district are required to report to school officials crimes that are committed on school property, and crimes committed off school property that they have reason to believe may pose a significant threat of imminent danger to students, staff, or school property. A law enforcement agency may delay the reporting of crimes to a school district if such a report may compromise an ongoing investigation. Michigan Statewide School Safety Policy; MCL 380.1308(4).

Prosecuting Attorney Reporting to Schools

The prosecuting attorney of a county must notify a school district located in whole or in part in that county of any criminal or juvenile court action initiated or taken against a pupil of the school district. This notification shall be made to either the school district superintendent or to the intermediate superintendent of the intermediate school district in which the county is located. If the notification is made to the intermediate superintendent, the intermediate superintendent shall forward the information to the superintendent of the school district in which the pupil is enrolled. Upon receiving this information, the school district superintendent must share the information with the appropriate school district personnel. Michigan Statewide School Safety Policy; MCL 380.1308(5).

Court Reporting to Schools

The appropriate court shall inform an appropriate school administrator of the name of the individual assigned to monitor a convicted or adjudicated youth attending a public school and how the individual may be contacted. Michigan Statewide School Safety Policy; MCL 380.1308(6).

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Intergovernmental Agreements

Many school districts have entered into agreements with local law enforcement agencies and prosecutors pursuant to Section 1308 to further the statutory reporting mandates. MCL 380.1308(7). The statute recognizes that these reporting obligations are subject to the privacy provisions of the Family Educational Rights and Privacy Act ("FERPA"). MCL 380.1308(9) and MCL 380.1308(10).

School Reporting After Student Expulsion

The legislation identifies certain student infractions that not only require reporting to the state, but also to the appropriate county department of social services or the local community mental health agency. Such infractions include possession of dangerous weapons on school property, arson, criminal sexual conduct, and physical assault against employees. Under the law, any student who commits one of these infractions is subject to permanent expulsion by the school board unless delegated to another body by statute. MCL 380.1311(2); MCL 380.1311(4); MCL 380.1311a(3).

Local School Assault Reporting to the School Board

A district superintendent or building principal who receives a report of any assault occurring at school by a pupil in grade 6 or above (whether against a student or school employee) shall forward the report to the school board. MCL 380.1310(1); MCL 380.1311(a)(1); MCL 380.1311(a)(2). The statute defines "physical assault" as "intentionally causing or attempting to cause physical harm to another through force or violence." MCL 380.1311(a)(1). A "verbal assault," which is defined by school board policy, includes the making of a bomb threat or similar threat directed at a school building, other school property, or a school-related event. MCL 380.1311(a)(2).

Governmental Agencies Reporting of Suspected Abuse/Neglect (Michigan Child Protection Law)

Requires a physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, **licensed professional counselor, social worker**, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, **school administrator, school counselor or teacher, law enforcement officer**, member of the clergy or regulated child care provider "who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the [Department of Human Services]." MCL 722.623(1)(a). In addition, the reporting person must file a written report within 72 hours after making the oral report, and notify the person in charge of the school that a report has been made, and make a copy of the written report available to the person in charge. *Id.*

Reporting of Disciplinary Records Upon Student Transfer

School districts are also reminded of their obligations under both federal and Michigan law regarding the transfer of student disciplinary records. Under the No Child Left Behind Act ("NCLBA"), each state must have a procedure in place to facilitate a school district's transfer of disciplinary records, with respect to a suspension or expulsion, to any private or public school in which the student is enrolled, or seeks, intends, or is instructed to enroll, on a full or part-time basis. 20 USC 7165(b).

Under Michigan's Revised School Code, a school district is required to place the expulsion of a student for certain acts (such as dangerous weapons offenses, arson, criminal sexual conduct, and assault against a school district employee) on the student's permanent record. MCL 380.1311(3) and MCL 380.1311(a)(3). Within 14 days after enrolling a student, the school shall request in writing from the student's previous school a copy of his or her school record. Any student that compiles records for each student in the school and that is requested to forward a copy of a transferring student's record to the new school shall comply within 30 days after receiving the request unless the record is tagged pursuant to the Revised School Code's missing student provisions. MCL 380.1135(4).

No Child Left Behind Act ("NCLBA") – Notice to Victims

Under Section 9532 of the NCLBA, states are required to establish and implement a policy requiring that a student attending a persistently dangerous public school or who becomes a victim of a violent criminal offenses while in or on the grounds of a public school that the student attends, be allowed to transfer to a safe public school within the school district, including a public charter school. 20 USC 9532.

Pursuant to this federal mandate, the Michigan State Board of Education adopted a State Safe School Choice Policy on April 24, 2003, providing that any pupil who becomes the victim of a violent criminal offense at the school in which the pupil is enrolled shall be allowed to attend a safe public school in the district. (*See attached Michigan Statewide Safe School Choice Policy*).

As used in the policy, "violent criminal offense" means an act that constitutes criminal sexual conduct as defined by the Revised School Code, constituting a felony violation of MCL 750.81 to 750.90g, or that constitutes an assault and infliction of serious or aggravated injury under MCL 750.81a. A pupil shall be considered to be a victim of a violent criminal offense when the pupil, or his or her parent or legal guardian, has made an official written complaint to law enforcement officials and to school officials of the pupil's district residence, that the pupil has been the victim of a violent criminal offense that occurred at school. School boards are required to offer the pupil the opportunity to transfer to a safe public school within the school district within ten days of receiving an official complaint.

SELECTED SAFE SCHOOLS PRESS SECTION SUMMARIES

Northwest Herald, *Disturbing essay details revealed*, April 27, 2007

<http://www.nwherald.com/articles/2007/04/26/news/local/doc4630304f12dd7798473383.txt>

- A McHenry County, Illinois high school student was arrested on disorderly conduct charges for an essay that contained violent imagery.
- When asked by a teacher to write an essay about anything he wanted, the student made references to violence, drug use, and a dream about a shooting spree where he had sex with dead bodies.
- According to the criminal complaint, the essay included phrases such as "as a teacher, don't be surprised on inspiring the first CG school shooting." And "drugs, drugs, drugs are fun. Stab, stab, stab, stab, s...t...a...b..., puke. So I had this dream last night where I went into a building, pulled out two P 90s and started shooting everyone, then had sex with dead bodies. Well, not really, but it would be funny if I did."
- The student was removed from the general school population and placed in a separate building to continue his education. He could be sentenced up to 30 days in jail and a \$1,500 fine if convicted.

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MSNBC.com, *36 California schools under lockdown*, April 19, 2007

<http://www.msnbc.msn.com/id/18203613>

- Authorities put all 36 schools in 12 Northern California school districts under lockdown as police officials searched for a man who claimed that he was planning an armed attack that would “make Virginia Tech look mild.”
- A police official stated that the suspect “was exhibiting symptoms of methamphetamine psychosis” and was several pounds lighter than he appeared in a recent arrest photograph because of methamphetamine abuse.
- The article also mentioned that other “copycat” threats had taken place in metro Detroit, the University of Minnesota, and schools in Arizona, Louisiana, North Dakota, Oklahoma, Tennessee, Texas, and Washington.

MSNBC.com, *Early warnings: Spotting mental illness on campus*, April 19, 2007

<http://www.msnbc.msn.com/id/18202223>

- In the last decade, the number of students arriving on college campuses with a history of mental illness has increased.
- According to the latest survey conducted in 2005 by the American College Health Association, 4 out of 10 college students reported having “felt so depressed it’s difficult to function” during the prior 12 months.
- According to a survey of university counseling center directors, out of 154 reported suicides at the colleges in the survey, 127 of the students- or 82 percent- had no contact with the school counseling office prior to taking their life.
- The author places some of the failure to act on warning signs communicated by Cho, the Virginia Tech shooter, can be blamed on privacy law and Americans with Disabilities-style protections, which prevent discrimination against a person suffering from depression.

Monroe Evening News, *Area school districts say safety always a concern; plans reviewed regularly*, April 18, 2007

http://nl.newsbank.com/nl-search/we/Archives?p_action=print&p_docid=1189E5C2EDE6

- Some Monroe County school districts decided to revisit their emergency response procedures after the Virginia Tech shootings.
- Other schools delayed review of their current emergency procedures because the policies are reviewed on a monthly basis.

MSNBC.com, *Cho’s words, actions fit school shooting pattern*, April 18, 2007

<http://www.msnbc.msn.com/id/18175525>

- Experts said that Cho Seung-Hui, the Virginia Tech shooter, exhibited three common characteristics that are common among school shooters: (1) he didn’t “just snap” but instead acquired the weapons weeks earlier; (2) he was considered a threat by others, even though he didn’t make any explicit threats; and (3) fellow students and teachers raised concerns about his behavior.
- In a 2002 study by the U.S. Secret Service, in more than three out of four school shootings, the attacker had made no threat against the schoolteachers or students.

- The Virginia Tech administration expressed frustration that their systems weren't adequately set up to deal with Cho, who had not made a threat or committed a crime.
- Psychologist Robert A. Fein offered a number of suggestions to school officials to prevent similar attacks, including: (1) disseminate clear descriptions of behavior that is and is not acceptable; (2) offer resources with no risk of losing privacy; (3) create a system that can deal both formally and informally with any concerns that are raised; (4) strengthen training and networking for all participants in a coordinated response; and (5) initiate more active investigation when someone is raising concerns.

Mlive.com, *Patrol cars sent to Linden schools this morning in light of Virginia Tech shootings*, April 17, 2007

http://blog.mlive.com/flintjournal/newsnow/2007/04/patrol_cars_sent_to_linden_sch.html

- Argentine Township Police Chief Hank Kelly sent patrol cars to two Linden schools this morning because he wanted to send a message to the community that it was safe in light of the Virginia Tech shootings.
- Kelly sent a patrol car to Linden Middle School and another to Linden High School so that they would be the police would be visible when students and parents arrived at the schools in the morning.

Mlive.com, *New light on YHS weapons incidents Principal failed to inform school board, nor were students expelled as law requires*, April 13, 2007

<http://www.mlive.com/news/aanews/index.ssf?/base/news-22/1176475279126790.xml&coll=2>

- Three Ypsilanti High School students were found with knives over a four-month span, but none faced expulsion, nor were the district superintendent and school board notified of the incidents.
- It was unclear whether the weapons incidents prompted Ypsilanti High School Principal Layne Hunt to resign, who announced that he would be leaving the job after an eight month tenure.
- The lack of action was in direct contravention of the superintendent's usual course of action, which he explained was to expel every student found to be in possession of a weapon.

The Macomb Daily, *School bullying bill in Senate hands*, April 10, 2007

http://macombdaily.com/stories/041007/loc_20070410025.shtml

- "Matt's Safe School Law," a bill that would prohibit students from bullying others for their sexual orientation and other reasons, was passed by the Michigan House of Representatives in late March.
- While the bill is endorsed by several groups and organizations, including the Michigan Department of Education, it is opposed by the American Family Association because the bill only prohibits bullying based on a number of defined characteristics, such as religion, race, color, national origin, age, sex, sexual orientation, or disability, instead of making a blanket prohibition on bullying.

Detnews.com, *Teacher pleads in sex sting*, April 10, 2007

<http://www.detnews.com/apps/pbcs.dll/article?AID=/20070410/METRO/704100351>

- A teacher at the International Academy in Bloomfield Township pleaded guilty to child sexually abusive activity for arranging a meeting with someone that he perceived to be a 14-year old boy that he met online.
- The felony charge carries a maximum penalty of 20 years in jail and a fine of up to \$100,000.

- The teacher had been exchanging e-mail and instant messages with the “boy”- who really an undercover officer with the Macomb Area Computer Enforcement Team- since February 19.

Mlive.com, *House OKs anti-bullying bill*, March 29, 2007

<http://www.lansingstatejournal.com/apps/pbcs.dll/article?AID=2007703290344>

- The Michigan House of Representatives passed legislation that would require Michigan schools to adopt anti-bullying and harassment policies.
- Conservative interests opposed the legislation because it would specifically protect students who are being bullied because of their sexual orientation.

Livingstondaily.com, *School districts already addressing the problem of bullying by students*, March 27, 2007

<http://www.livingstondaily.com/apps/pbcs.dll/article?AID=2007032>

- An op-ed article argues that the bill would not have prevented the bullying and subsequent suicide of Matt Epling, for whom the bill was named.
- The author also argues that the bill is unnecessary since schools such as Pinckney Community High School, Fowlerville High School, and Hartland Consolidated Schools have already taken the initiative to institute programs designed to prevent bullying.
- Lastly, the author believes that local control should be maintained by the school districts due to the complex nature of bullying.

Detnews.com, *Schools marking fingerprint rule*, March 26, 2007

<http://www.detnews.com/apps/pbcs.dll/article?AID=/20070326/SCHOOLS/703260366/1026>

- Schools have until July 1, 2008 to fingerprint all employees even if they have been fingerprinted in the past.
- Some employees are required to pay as much as \$70 to be fingerprinted, however, the price varies by district.
- The money does not go back into the schools, but to the Michigan State Police and the FBI.

Hometownlife.com, *Teen faces terrorism charges in bomb threat*, March 25, 2007

<http://www.hometownlife.com/apps/pbcs.dll/article?AID=/20070325/NEWS06/703250401>

- A fifteen year old boy faced terrorism charges in connection with a bomb threat at North Farmington High School in March. The teen allegedly left a threatening telephone message at the school on March 12, reportedly stating that he was going to blow up the school in four hours and demanded \$5,000 in cash.
- The high school was evacuated on the day of the threat while police and bomb experts combed the building. Police stated that the threats appeared to be credible, charged the teen with “making a terrorist threat or making a false report of terrorism,” a 20 year felony for adults, and a second charge of “making a false report or threat of a bomb or harmful device,” a four-year felony.
- School administrators stated that the school district does not take these incidents lightly due to their interference with student learning and student safety.

Baltimore Sun, *Lawmakers consider bill calling for all schools to rein in bullying*, March 13, 2007

<http://www.post-gazette.com/pg/07072/768978-298.stm>

- Baltimore school officials have drafted a school safety plan filled with initiatives designed to address the rise in student gang violence, and to reduce the number of suspensions, expulsions,

arrests, and truancy by focusing on initiatives to prevent violence, such as training teachers on how to effectively manage their classrooms.

- If adopted by the school board, the plan would incorporate the Gang Resistance Education and Training (G.R.E.A.T.) program in Baltimore schools, allowing police officers to teach drug and gang prevention programs.
- In promoting the plan, school officials have expressed a desire to move away from a zero-tolerance policy mandating automatic suspension or expulsion for fighting in school, and place greater emphasis on building positive relationships between students and their teachers.

Pittsburgh Post-Gazette, *Lawmakers consider bill calling for all schools to rein in bullying*, March 13, 2007

<http://www.post-gazette.com/pg/07072/768978-298.stm>

- The Pennsylvania Senate recently approved legislation that would require all schools to develop policies against bullying, if they do not already have one in place.
- The Bill passed by an overwhelming majority (42-6) and was sent to the House Education Committee for consideration.
- The Pennsylvania Department of Education has determined that students are victims of bullying when they are exposed repeatedly to negative actions by one or more students. The criteria explain that a negative action occurs “when someone intentionally inflicts or attempts to inflict injury or discomfort upon another.”
- The legislation adopts the definition of bullying developed by the Department of Education, which encompasses “cyber bullying,” or the use of technological devices to harass others. For instance, by using a computer or cell phone to post harassing comments or pictures on websites, blogs, or through instant messaging and e-mails.
- The anti-bullying policies would be subject to review every three years, and schools would provide the state Office of Safe Schools with copies of the policies and information regarding their development and implementation of bullying prevention and intervention programs.

MICHIGAN STATEWIDE SAFE SCHOOL CHOICE POLICY

1. As used in this Policy, all references to Michigan school districts include elementary or secondary public schools and public school academies (charter schools).
2. As used in this Policy, "school board" means a school board, intermediate school board, or the board of directors of a public school academy.
3. Any pupil enrolled in a school identified as a Persistently Dangerous School shall be allowed to attend a safe school within the school district. The school board shall offer the pupils attending a school identified as a Persistently Dangerous School with the opportunity to transfer to a safe school within the school district. For those pupils who accept the offer, the school board shall complete the transfer in a timely manner.
4. Any pupil who becomes the victim of a violent criminal offense at the school in which the pupil is enrolled shall be allowed to attend a safe public school within the school district. The school board shall offer the pupil the opportunity to transfer to a safe public school within the school district within ten days of receiving the official complaint described herein.

DEFINITION OF A PERSISTENTLY DANGEROUS SCHOOL

A public elementary school or secondary school shall be identified as a Persistently Dangerous School if for each school year, for three consecutive years, more than 2.5 percent of pupils, or five pupils enrolled in the school, whichever is greater, have been expelled by the school board or its designee, as described in MCL 1311(1) of the Revised School Code, for more than ten consecutive days, for committing at school any of the following offenses, as defined by the Revised School Code:

- Arson;
- Physical Assault;
- Bomb Threat or Similar Threat;
- Criminal Sexual Conduct;
- Possession of a Dangerous Weapon; or

If, for each school year, for three consecutive years, more than 2.5 percent of pupils or five pupils enrolled in the school, whichever is greater, have been victims of a violent criminal offense as defined herein.

Alternative education programs and strict discipline academies that are appropriate for expelled individuals are exempt from this Policy, and the pupils attending these facilities are not allowed the right to transfer to another school.

Juvenile detention facilities are exempt from this Policy.

As used in this Policy, "at school" means in a classroom, elsewhere on school premises, on a school bus or other school-related vehicle, or at a school-sponsored activity or event, whether or not it is held on school premises. For offenses that occur on a school bus, other school-related vehicle, or at a school-sponsored activity or event, whether or not it is held on school premises, the offense need only be reported by the offender's district of residence.

The Michigan State Board of Education does not imply that a pupil must be convicted of an offense before he or she can be expelled. All definitions referred to in this Policy are to be construed according to the fair import of their terms, to promote justice, and to effect objects of the law. Whether a pupil has committed an offense warranting expulsion for more than ten consecutive days is a determination to be made by the school board or its designee, at its discretion and as permitted by law. Moreover, this Policy does not limit the reasons a school board may suspend or expel a pupil.

DEFINITION OF VICTIM OF VIOLENT CRIMINAL OFFENSE

A pupil shall be considered to be a victim of a violent criminal offense when the pupil, or his or her parent or legal guardian:

- Has made an official written complaint to law enforcement officials and to school officials of the pupil's district residence, that the pupil has been the victim of a violent criminal offense at school; and
- If the official complaint indicates that the violent criminal offense occurred at school.

As used in this Policy, "violent criminal offense" means an act that constitutes criminal sexual conduct as defined by the Revised School Code, constituting a felony violation of MCL 750.81 to 750.90g; or that constitutes an assault and infliction of serious or aggravated injury under MCL 750.81a.

REPORTING REQUIRED BY THE MICHIGAN STATEWIDE SAFE SCHOOL CHOICE POLICY

Each school board with a school within its jurisdiction falling within the state criteria described below shall prepare and submit a report on each Persistently Dangerous School in the school district. The report shall be simultaneously submitted to the State Superintendent of Public Instruction (SPI) and intermediate school district superintendent no later than 30 days after the close of the school year, commencing with the 2002-03 school year. Each school board shall report as follows:

WHOLE SCHOOL REPORTING

If more than 2.5 percent of the pupils enrolled in a school have been expelled for offenses identified in this Policy, then the school board, or the Center for Educational Performance and Information, upon completion of the MEIS data collection, identifies a school as a Persistently Dangerous School, shall identify the school, report on how many pupils are enrolled in the school, and the nature and number of offenses committed by pupils identified in this Policy. At the time the report is submitted, the school board shall notify the SPI and intermediate school district superintendent, and the parents of each pupil attending the school, that the school has been identified as a Persistently Dangerous School.

INDIVIDUAL PUPIL OPTION REPORTING

If a pupil who has been the victim of a violent criminal offense, as defined in this Policy, elects to transfer to a safe school within the school district, then the school board shall identify in the report the pupil's original school and the school to which the pupil is transferred, as well as the offense of which the pupil was a victim.

CORRECTIVE ACTION PLAN REQUIRED BY THE MICHIGAN STATEWIDE SAFE SCHOOL CHOICE POLICY

Each school board, with a school within its jurisdiction that has been identified as a Persistently Dangerous School, shall submit a Corrective Action Plan to the SPI for approval. The Corrective Action Plan must be submitted to the SPI within 30 days of the school board's report and notification to the SPI that the school has been identified as a Persistently Dangerous School.

The Corrective Action Plan shall address the issues that resulted in the school being identified as Persistently Dangerous. Upon completion of its Corrective Action Plan, a school board may apply to the SPI to have the school removed from the list of Persistently Dangerous Schools.

This Policy may be reviewed periodically by the State Board of Education.