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MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP November 8, 2006

LEGAL UPDATE

**(Covering the time period from
September 12, 2006 to November 8, 2006)**

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MICHIGAN SAFE SCHOOLS INITIATIVE

November 8, 2006

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SAFE SCHOOLS CASE LAW UPDATE

The following cases in our jurisdiction are summarized because of their potential applicability and relevance to Michigan Safe Schools' law.

Michigan Court of Appeals

Thompson v. Rochester Community Schools, 2006 WL 3040137 (Mich.App. 2006)

Facts: Cady Elkins, a student at Rochester High School, collapsed suddenly while waiting in line in the high school cafeteria. While lying on the floor, Cady was unresponsive, unconscious and her face changed from an ashen gray color to blue. School staff members that were assisting Cady believed that she was having a seizure and that she needed to "ride it out" and that she was "resting comfortably" and "sleeping." At no time did anyone administer CPR to Cady or use the school's Automated External Defibrillator. Cady's mother was called and arrived at the high school before the paramedics or other emergency personnel. School staff eventually called 911 after several minutes of unresponsiveness. The 911 transcript revealed significant delays in responding to the operator's questions and instructions because questions and instructions were being relayed to the scene through a third party. The transcript also revealed a lack of professionalism and no sense of urgency on the part of school staff, even indicating at certain times that people in the school office were laughing instead of listening to the 911 operator's instructions. When paramedics ultimately arrived on the scene, they performed CPR, administered drugs, and took other life-support measures. However, Cady never regained consciousness and died. The cause of death was in dispute, but most doctors believed that Cady suffered from cardiac arrhythmia. The dispute was whether it was caused by an epileptic seizure.

Cady's representative filed an action which alleged that the defendants, which included the school district, the high school principal, assistant principals, hall monitors, a teacher and a paraprofessional, were grossly negligent in their response to Cady's condition and breached the duty of care that they owed to this student by failing to administer aid and CPR, for failing to use the defibrillator, and failing to call 911 in a timely manner.

A pediatric cardiologist testified that she believed that if the school officials who were assisting Cady had used the defibrillator and CPR in a timely manner that it would have restored Cady's normal heart rhythm and she would have had greater than a 50 percent chance of survival. She also said that it was unreasonable to delay calling 911 when a young student collapses and becomes unconscious, regardless of the belief that the student may be having an epileptic seizure. A risk management consultant also testified that the District's response was an "extremely sub-standard performance by any standard" and opined that this response caused Cady's death. He also testified that the District had breached the standard of care by assuming that Cady was experiencing an epileptic seizure without first calling 911. He said that they could have at least obtained the defibrillator and put it on Cady's chest and if she had a normal heart rhythm, the defibrillation would detect the heart rhythms and would not have delivered a shock.

Issue: Were the individual District officials grossly negligent in their handling of this incident?

Holding: The evidence in this case was sufficient to allow reasonable minds to conclude that defendants “willfully disregarded . . . precautions or measures to attend to safety” and singularly disregarded . . . substantial risks.”

Reasoning: The court reasoned that the record showed that defendants relied on a paraprofessional and a coach to diagnose that Cady was suffering from an epileptic seizure. The paraprofessional in this case had no medical training and the coach was indifferent to the situation. Nonetheless, defendants deferred to the diagnosis of these two non-experts that she should be allowed to “ride it out” and persisted to characterize her condition as a seizure even after learning that she had no history of seizures or similar medical problems. The court further reasoned that because defendants relied on this conclusion, no one attempted to perform CPR, to obtain the district’s defibrillator, or to call 911. The court was baffled at how the officials could have concluded that Cady was resting or sleeping after several minutes of unresponsiveness and increasing blue coloration. In addition, the court pointed to the testimony of three cafeteria workers who testified that “defendants simply did not care about the safety or welfare of Cady.” In the past, school staff had called 911 nearly immediately for relatively minor student injuries but in this case, the defendants waited at least 14 minutes before calling 911 for Cady, causing the court to question the defendants’ state of mind with regard to disparate treatment between students. The court also cited the expert testimony that defendants’ alleged gross negligence actually caused Cady’s death to establish the requisite proximate cause.

The court found that the issue of whether the individual defendants were grossly negligent and whether their gross negligence was the proximate cause of Cady’s injury should be heard by a jury.

MICHIGAN SAFE SCHOOLS INITIATIVE WORKGROUP¹
PROPOSED LEGISLATION

Michigan House of Representatives Bill 6403 - Permits a School to Seek a “Student Body Protection Order” to Restrain or Enjoin an Individual from Entering on or Coming within 1000 feet of School Property

On September 5, 2006, Tom Casperson (R – Escanaba) introduced House Bill 6403 to the House of Representatives, where it was referred to the Committee on the Judiciary. On September 21, 2006, the House passed House Bill 6403. It is currently in the Senate.²

¹ The following Bills were discussed at the last Safe Schools Initiative: House Bill 6265, which allows Districts to refuse enrollment for students who have been expelled from a nonpublic school for possession a dangerous weapon in a weapon free school zone, was referred to the Committee on Education where it remains, House Bill 6350, which requires a school district’s computer course and curriculum to include instructions on internet safety also remains in Committee and has not passed the House or the Senate, House Bill 6307, which amends the Penal Code to include sexual acts perpetrated by a coach against a student constitute criminal sexual conduct, has not passed the House or the Senate, House Bill 6173, which permits school districts to share the results of criminal background checks for contract employees, regulates who needs a background check, permits the results of the background check to be reported to the individual’s employer for individuals under contract, and requires the Department of Education to compile a list of individuals who regularly and continuously work under contract for school districts, remains in the Committee level in the House of Representatives.

² The Legislative History provided the following information regarding the origins of this Bill:

Earlier this year, a superintendent of a school in the Upper Peninsula filed a petition to request a personal protection order (PPO) against an individual who had previously been convicted of lewd behavior within a school zone and who was now parking his car near school property, allegedly for the purpose of engaging in another lewd act of some kind. In signing the petition, the superintendent alleged he was acting in loco parentis (Latin for “in place of the parent”) for the students in the school district.

Generally speaking, a personal protection order is sought by one person to protect himself or herself from the actions of another; for instance, from a stalker or, in cases of domestic violence, the batterer. Only the person intended to be protected by the order can initiate the action, though a parent can initiate an action for a minor child and a legal guardian or custodian can initiate an action on behalf of a ward.

Therefore, according to the judge assigned to review the petition, he “was hesitant to interpret the law in such manner as to expand or modify the law by judicial edict.” Because the judge became convinced “that the protection sought was within the protection afforded to the class of individuals to be protected by the existing statutes,” he did eventually sign the PPO, which prohibited the individual from engaging in certain acts within a defined school zone.

However, there remains the question as to whether or not the judge had the legal ability to issue the PPO under current law. To address this issue, legislation has been proposed to create a “student body protection order” and to establish parameters for its use.

Under the current law, an individual may obtain a personal protection order in domestic and in non-domestic situations. For a domestic situation, the petitioner may request a PPO to restrain or enjoin a spouse, former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from entering

House Bill 6403 provides that school districts, after approval by the Superintendent or his or her designee, may commence an action in Circuit Court requesting the issuance of a student body protection order to restrain or enjoin an individual from coming within 1000 feet of school property.³ In order for a court to issue a student body protection order, the court must determine by clear and convincing evidence, after notice and a hearing, that the respondent has committed certain sex offenses⁴ or drug offenses⁵, including manufacturing and delivering a controlled

onto premises, assaulting a named individual, threatening to kill or physically injure a named individual, impermissibly removing minor children from the individual having legal custody of the children, purchasing or possessing a firearm, interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined, interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment, having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address, engaging in conduct that constitutes stalking under the Michigan penal code MCL 750.411h and 750.411i, any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. In addition, an individual in a non-domestic situation may request a PPO by petitioning the circuit court and alleging facts that constitute stalking as defined in the Michigan penal code, MCL 750.411h and 750.411i. PPOs are typically granted by a judge on an emergency basis in an ex parte hearing for up to 182 days.

³ The Bill incorporates the following definitions found in the Sex Offenders Registration Act by reference:

"School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

"School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(i) It is used to impart educational instruction.

(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.

⁴ These include the following crimes that constitute "listed offenses" under Michigan's Sex Offenders Registry Act:

1. Accosting, enticing or soliciting child for immoral purposes, MCL 750.145a (felony)
2. Accosting, enticing or soliciting child for immoral purposes; second or subsequent offenses, MCL 750.145b(felony)
3. Child sexually abusive activity or material, MCL 750.145c (felony)
4. Crime against nature or sodomy, MCL 750.158, if a victim is an individual less than 18 years of age (felony)
5. A third or subsequent conviction of any combination of the following:
 - A. A "disorderly person", MCL 750.167(1)(f), a person who is engaged in indecent or obscene conduct in a public place. (misdemeanor)
 - B. Indecent exposure, MCL 750.335a (misdemeanor)
 - C. A local ordinance of a municipality substantially corresponding to a section described in subparagraph (A) or (B).
6. Except for a juvenile disposition or adjudication, Gross indecency; between male persons under MCL 750.338, Gross indecency; between female persons under MCL 750.338a, and Gross indecency; between male and female persons under MCL 750.338b, if a victim is an individual less than 18 years of age. (felony) The term "gross indecency," prohibits oral and manual sex acts committed without consent or with person under age of consent or any ultimate sexual act committed in public. People v. Lynch, 179 Mich.App. 63 (1989).
7. Kidnapping, MCL 750.349, if a victim is an individual less than 18 years of age. (felony)
8. Kidnapping, child under 14, MCL 750.350. (felony)

substance. The court may not deny the request for a student body protection order solely because the individual has not been charged or convicted of an offense or because there is no police report related to the alleged conduct. The court would have the discretion to modify an order to tailor the student body protection order as necessary to balance the rights of the respondent and the safety and welfare of the school's students if the respondent were a student of the school, a parent of a student of the school, or a registered voter in the state and his or her polling place was located on school property.

An individual 17 years of age or older who refused or failed to comply with a student body protection order would be subject to the criminal contempt powers of the court and, if found guilty, would have to be imprisoned for not more than 93 days and could be fined not more than \$500. An individual less than 17 years of age would be subject to the dispositional alternatives listed in the Probate Code. In addition, a criminal penalty could be imposed in addition to any penalty that may be imposed for another criminal offense arising from the same conduct. A person who knowingly and intentionally made a false statement to a court in support of his or her petition for an order would also be subject to the contempt powers of the court.

United States House of Representatives Bill 5295 – Requires Local Education Agencies to have Policies Permitting Reasonable Suspicion Searches of Students for Weapons, Materials and Drugs

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9. Soliciting, accosting, or inviting to commit prostitution or immoral act, MCL 750.448 (misdemeanor for first two, guilty of this crime with two or more misdemeanors is a felony), if a victim is an individual less than 18 years of age.
 10. Pandering, MCL 750.455, which is defined as any person who shall procure a female inmate for a house of prostitution; or who shall induce, persuade, encourage, inveigle or entice a female person to become a prostitute, etc. (felony)
 11. First degree criminal sexual conduct, MCL 750.520b (felony)
 12. Second degree criminal sexual conduct, MCL 750.520c (felony)
 13. Third degree criminal sexual conduct, MCL 750.520d (felony)
 14. Fourth degree criminal sexual conduct, MCL 750.520e (misdemeanor)
 15. Assault with intent to commit criminal sexual conduct, MCL 750.520g. (felony)
 16. Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.
 17. An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in MCL 750.10a.
 18. An attempt or conspiracy to commit an offense described above.
 19. An offense substantially similar to an offense described above under a law of the United States, any state, or any country or under tribal or military law.
- ⁵ This would include the following drug offenses:
1. A violation of Section 7401 (manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver a controlled substance or prescription form).
 2. Section 7410a of the Public Health Code (delivery of controlled substances).
 3. Section 7401b (manufacture, delivery, or possession of GHB).
 4. Section 7401c (manufacture of controlled substance – operating a drug lab).
 5. Section 7402 (creating, manufacturing, delivering, or possession with intent to deliver counterfeit substance or controlled substance analogue).
 6. Section 7410a (delivery or intent to deliver controlled substance in or within public or private park).
 7. Section 7416 (recruiting, inducing, soliciting, or coercing minor to commit felony involving drugs).

U.S. Representative Geoff Davis (R - Kentucky) introduced H.R. Bill 5295, called the Student and Teacher Safety Act of 2006, to the U.S. House of Representatives on May 4, 2006, where it was referred to the Committee on Education Reform. On September 19, 2006 it passed the House of Representatives by voice vote. The Bill was introduced to the Senate on September 20, 2006 and referred to the Committee on Health, Education, Labor, and Pensions.

If passed, this bill would require local education agencies to draft policies permitting a “search by a full-time teacher or school official, acting on any reasonable suspicion based on professional experience and judgment, of “any minor student on the grounds of any public school, if the search is conducted to ensure that classrooms, school buildings, school property and students remain free from the threat of all weapons, dangerous materials, or illegal narcotics.” The measures used to conduct any search must be reasonably related to the search's objectives, without being excessively intrusive in light of the student's age, sex, and the nature of the offense.”

SELECTED SAFE SCHOOLS PRESS SECTION SUMMARIES

Recent School Violence:

MSNBC.com, Police: College shooter shot self after hit in arm, September 14, 2006

(<http://www.msnbc.msn.com/id/14818183/print/1/displaymode/1098/>)

MSNBC.com, Montreal college shooter made hints on blog, September 14, 2006

(<http://www.msnbc.msn.com/id/14818183/print/1/displaymode/1098/>)

- A gunman in Montreal, Quebec, Canada killed one person and wounded 19 others at a Montreal college.
- The gunman starting shooting outside the college, then entered the second-floor cafeteria and opened fire. The gunman opened fire haphazardly at no target in particular, until he saw police and then took aim at them.
- Prior to being killed by police, the gunman admitted to liking and playing an internet game about the Columbine shootings - “Super Columbine Massacre”.

MSNBC.com, Details from Colo. school shooting emerge, September 28, 2006;

(<http://www.msnbc.msn.com/id/15041037/>)

CNN.com, Sheriff: School shooter sent letter to say sorry, September 28, 2006

(<http://www.cnn.com/2006/US/09/29/school.shooting/index.html>)

- A gunman in Bailey, Colorado took six girls hostage in a classroom for hours before fatally wounding one.
- One 16-year-old student at Platte Canyon High School was shot and killed when the police used explosives to storm the classroom. The gunman committed suicide when the police stormed the classroom.
- The gunman entered the school and reportedly approached a male student with a list of female student names and asked the student to identify the females. It was unclear whether any of those females were taken as hostages.

- The gunman entered the classroom, fired a gun and began telling some of the students to leave and others, all girls, to stay. Reports indicate that he sexually assaulted at least some of the hostages during the siege.

abcnews.go.com, School safety back under scrutiny, October 1, 2006.

(<http://abcnews.go.com/US/wireStory?id=2513876&CMP=OTC-RSSFeeds0312>)

- In light of recent incidents of school violence that have occurred in the last month, the issue of school security is receiving increased attention.
- Park County Sheriff Fred Wegener, a resource officer from Platte Canyon High School, was out of the building when a gunman reportedly sat in the school parking lot and wandered the hallways for as long as 35 minutes before the siege began. Wegener said that educators had been instructed in August on what to do if the school came under attack.
- Since Columbine, school officials have been taught to write emergency response plans and practice them, to lock down schools and evacuate when it appears safe. Law enforcement officers were once taught to set up a perimeter and wait for SWAT teams to arrive are now trained to enter the building and work as quickly as possible to locate the gunman.
- One student said that they practiced drills for emergencies last year including if a gunman entered the school. However, the student reported that during this hostage situation a voice came over the intercom and told the students and teachers that they have a “code white” and no one knew what a “code white” was. He said that a teacher pulled out a sheet of paper from her desk, checked it, and then herded her students into a nearby classroom that had a solid door and, after 25 minutes, a police officer led them into the hallway and out of the school.
- Lawmakers from Colorado are looking into video cameras and other security systems to assist in securing school property.

MSNBC.com, Details emerge about teen held in Wis. shooting, October 1, 2006

(<http://www.msnbc.msn.com/id/15060698/>)

- 15 year old student shot his high school principal because he was upset with a reprimand by the principal for carrying tobacco and he believed that the teachers did not intervene to stop students who harassed him.
- The student was taken into custody, arrested and charged as an adult with murder and he could get life in prison if convicted.
- The student obtained two guns by prying open his family’s gun cabinet, taking out a shotgun, retrieving the key to his parents’ locked bedroom and taking a .22 caliber revolver. The student entered the school before classes began and pointed the shotgun at a social studies teacher, but the teacher wrested it from the student. When the student reached for the handgun, the teacher ran for cover. At that point, the school principal confronted the student and shots were fired. The principal wrestled the shooter to the ground and swept away the gun. The student was detained by staff and students until the police arrived. The principal was shot in the head, chest, and leg and died hours later in the hospital.

- The student reportedly told a friend a few days earlier that the principal “would not make it through homecoming” referring to festivities planned for the school’s upcoming homecoming weekend.

CNN.com, Fifth girl dies after Amish school shooting, October 3, 2006

(<http://www.cnn.com/2006/US/10/02/amish.shooting/index.html>)

- A heavily armed man barricaded himself in a one-room Amish schoolhouse and killed five girls execution-style before killing himself on October 2, 2006. Six other girls were bound and critically wounded in the attack.
- The gunman barricaded himself in the schoolhouse using two by four and two by six pieces of lumber. He told students to line up in front of the blackboard and began to tie his female captives’ feet together. He let the 15 boys in the classroom leave. He also allowed an adult female who was pregnant to leave with three other adult females who had infant children with them.
- The motive for the crime appeared to be a revenge killing for an event that happened when the gunman was a boy.
- The gunman had a shotgun, a semiautomatic pistol, a rifle, a stun gun, two knives, and a bag holding 600 rounds of ammunition. He also had assorted tools and other items that led police to believe he was prepared for an extended siege.
- The gunman called 911 and said that if the state police did not leave the property, he would shoot people within 10 seconds. Within seconds, he started shooting and police stormed the school house through the windows and found the gunman dead.

USAToday.com, Summit on school safety focuses on collaboration, October 10, 2006

(http://www.usatoday.com/news/washington/2006-10-10-school-safety_x.htm?csp=34)

- Responding to recent school shootings, President Bush convened a one-day summit on school safety on Tuesday, October 10, 2006.
- The event was run by Attorney General Alberto Gonzales and Education Secretary Margaret Spellings and focused on what communities can do to keep kids from acting out violently and discussed how schools react to violence. President Bush attended the last hour of the event.
- Attorney General Gonzales said that schools need to review crisis plans regularly because of staff turnover.
- A panelist cited to the lockdown drills conducted in Bailey, Colorado which enabled officers to “get right to Room 206 and pin the shooter down there.”
- The conference pointed to the biggest challenge facing those who would stop school violence which is the differing theories about what causes it and how to prevent it. Theories include bullying, easy access to firearms, a broken mental health system, bad parental role models, absent fathers, the death of God in public schools, not enough character education, too much emphasis on academics, too much testing, too many violent video games and movies, too much violent TV and music, and the side effects of antidepressants to name a few.

- Some attendees said that the summit delivered few fresh ideas, but others said that the discussion had advanced since 1999, when two teenage gunmen stormed Columbine High School in Colorado.

MSNBC.com, Will controversy – or quality – sell ‘Bully?’, October 24, 2006

(<http://www.msnbc.msn.com/id/15389371/print/1/displaymode/1098/>)

MSNBC.com, Is ‘Bully’ fun to play? Like, for real, October 24, 2006

(<http://www.msnbc.msn.com/id/15389371/print/1/displaymode/1098/>)

- ‘Bully’ is the latest video game created by Rockstar Games – the same company that created the controversial “Grand Theft Auto” franchise.
- The main character is a target for tougher students, power-hungry perfects, oblivious adults and anyone else who thinks this boy might be able to do something useful for them.
- The game pokes right into the heart of the harrowing teen years – cliques, cruelty, popularity, humiliation, the awkward onset of sexual maturity.
- Parent and school groups are calling for “Bully” to be banned and gamers are asking “Is it any fun to play?”
- Supporters of game states that, while not perfect, it deserves high marks for depth, playability, and concept.

<p>SUMMARY OF SCHOOL SAFETY INITIATIVE REPORTING AND EMPLOYMENT CONSEQUENCES</p>

Collins & Blaha, P.C. has received a significant number of inquiries from our school clients regarding a comprehensive package of legislation, referred to as the “Schools Safety Initiative”, effective January 1, 2006, which amends various sections of the Revised School Code (“RSC”), the Michigan Teachers’ Tenure Act, the Sex Offenders Registration Act (“SORA”), the Code of Criminal Procedure, the Child Care Organization Act. When employees have to report if they are charged or convicted of a certain crime to the District and what employment actions the District should take for a particular crime can be confusing. In an effort to resolve this confusion and assist Districts in applying these laws, we have prepared the following attached documents:

1. Summary of School Safety Initiative reporting and employment consequences
2. Flowcharts for reporting requirements and employment consequences for certified and non-certified employees
3. Attachments which includes the crimes listed in the RSC that require employee self-reporting and the crimes listed in the SORA that require employment action

In addition, under the new package of legislation, school districts are required to fingerprint and complete background checks of school employees and certain contractors. Recently, more than 460 Michigan school districts have filed suit against the state seeking compensation for these fingerprinting fees.

Summary of School Safety Initiative Reporting and Employment Consequences

The following is an outline of the criminal process and the applicable laws:

1. A school employee¹ is **arrested**: The law does not mandate that the arrest be reported to the School District (“District”) or the Department of Education (“Department”). The law does not require that any employment action be taken.
2. A school employee² is **charged** with a crime at an arraignment hearing, a plea is entered, and bail is set, if necessary.
 - A. If the school employee is **charged** with any felony or misdemeanor listed in the Sex Offenders Registry Act (“SORA”) the employee must report the charge to the District and the Department on the appropriate form within 3 business days of arraignment. Failure to report is grounds for discharge.
 - B. If the school employee is **charged** with **any other felony**, the employee must report the charge to the District and the Department on the appropriate form within 3 business days of arraignment. Failure to report is grounds for discharge.
 - C. If the school employee is **charged** with a **misdemeanor crime the listed in the Revised School Code** (“RSC list”), such as assault and battery, the employee must report the charge to the District and the Department on the appropriate form within 3 business days of arraignment. Failure to report is grounds for discharge.
 - D. If the school employee is **charged** with a **misdemeanor that is not listed on the RSC list**, such as first offense drunk driving, the law does not require that the charge be reported to the District or the Department, nor does it require that any employment action be taken. However, the District has the discretion to take disciplinary action stemming from the criminal charge depending on adverse effect and a nexus with the school.
 - E. If the school employee is **not incarcerated**, the District should make a determination of whether to suspend with pay pending the criminal proceedings or to permit the employee to continue working.
 - F. If the school employee is **incarcerated** pending the criminal proceedings or there is a court order in place that prohibits him or her from working, the District should consider whether to grant a leave of absence. Abandonment issues should also be addressed if the school employee is unable to return to work.

¹ School districts have until July 1, 2008 to conduct fingerprint background checks of all current employees. MCL 380.1230g. School districts must continue to request criminal background checks upon offer of initial employment or for individuals who are assigned to regularly or continuously work under contract. MCL 380.1230 and 380.1230a.

² The law also applies to applicants and to individuals who regularly and continuously contract with a school district. “Regularly and continuously work under contract” means either of the following:

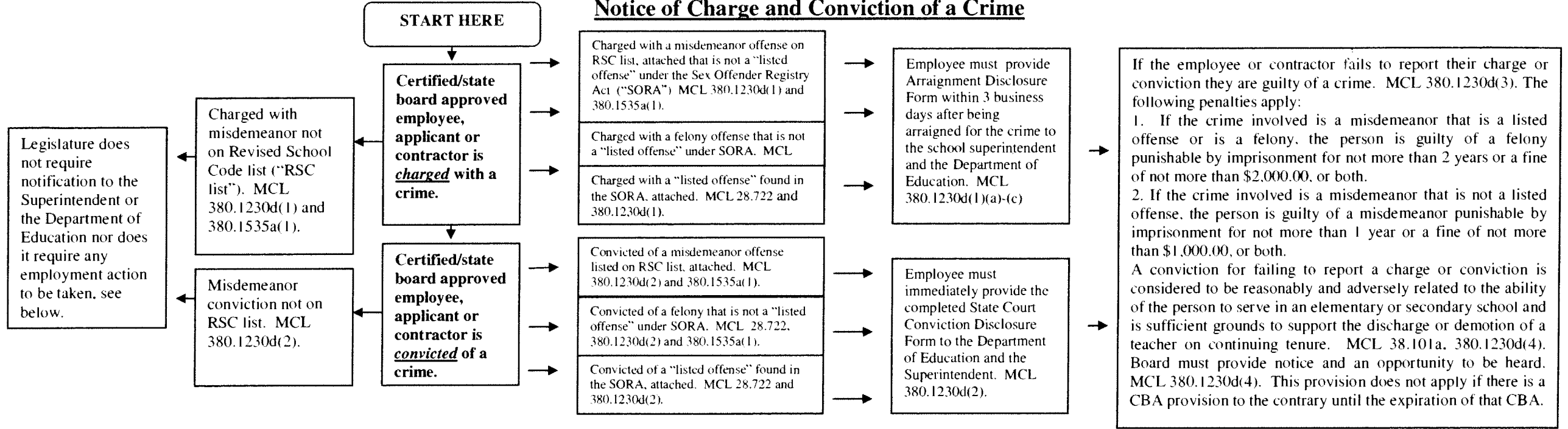
(i) To work at school on a more than intermittent or sporadic basis as an owner or employee of an entity that has a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

(ii) To work at school on a more than intermittent or sporadic basis as an individual under a contract with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils.

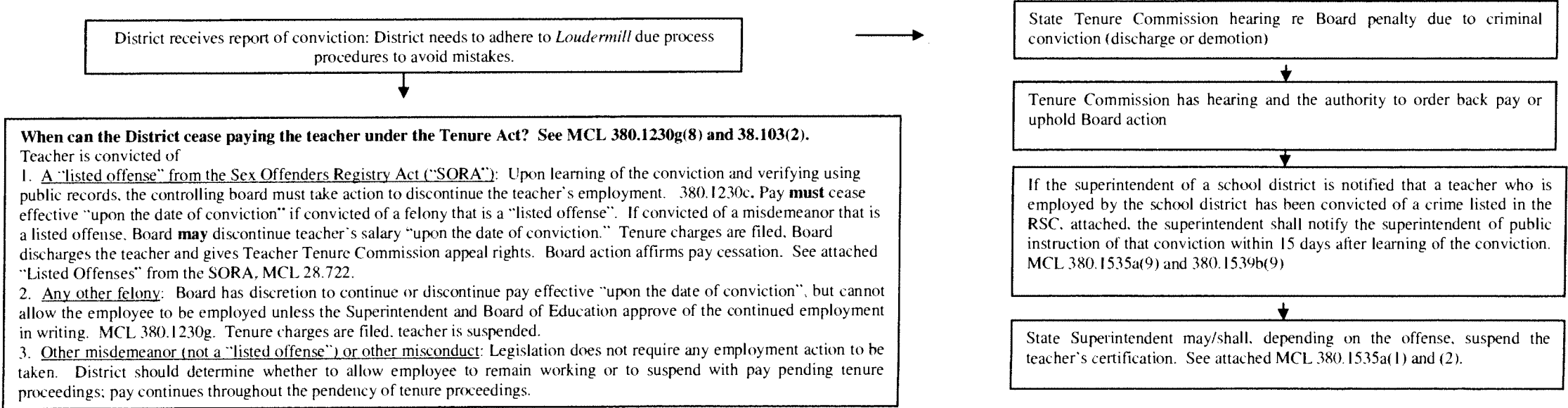
3. A school employee is **convicted** of a crime by a judge or jury, enters a guilty plea, or pleads no contest.
 - A. The school employee must **report** to the District and the Department when he or she is convicted of a felony or misdemeanor listed in the Sex Offenders Registry Act (“SORA”).
 - B. The school employee must **report** to the District and the Department when he or she is convicted of any other felony.
 - C. The school employee must **report** to the District and the Department when he or she is convicted of any other misdemeanor listed in the RSC.
 - B. The school employee is **not** required under the law to **report** to the District or the Department when they are convicted of a misdemeanor offense that is not on the RSC list.
 - C. If the employee who was **convicted** of a crime listed in the RSC holds a **teaching certificate** or state board approval,³ then the District must report their conviction to the superintendent of public instruction for possible suspension and revocation of their teaching certificate or state board approval.
 - D. Employment consequences for a conviction:
 - i. Convicted of a misdemeanor and/or felony offense listed in the Sex Offenders Registry Act (“SORA list” or “listed offense”) → Upon learning of the conviction and verifying the conviction using public records, the employee must be **discharged** in accordance with due process procedures, the collective bargaining agreement and the Teacher Tenure Act. A teacher has the right to **appeal** and arbitrate their discharge. Other employees may arbitrate the claim under the procedures of the CBA.
 - ii. Convicted of any other felony not on the SORA list → The employee must be discharged **unless** the Superintendent and the Board of Education must **agree** in writing to the work assignment. A teacher has the right to appeal and arbitrate their discharge. Other employees may arbitrate the claim under the procedures of the CBA.
 - iii. Convicted of any other misdemeanor not on the SORA list (even if it is listed on the RSC list) → No action is required under Michigan law. The District may take employment action if there is an adverse effect and a sufficient nexus with the school.
 - E. Pay Ramifications for a criminal conviction
 - i. Convicted of a felony or misdemeanor on the SORA list: Pay must **cease** upon the date of conviction if convicted of a **felony** on the SORA list. If convicted of a **misdemeanor** that is on the SORA list, the Board **may** discontinue the teacher’s salary upon the date of conviction.
 - ii. Convicted of any other felony not on the SORA list: Board has the **discretion** to continue or discontinue pay upon the date of conviction.
 - iii. Convicted of any misdemeanor not on the SORA list: Michigan law does not require any employment action be taken. Disciplinary action is within the District’s discretion. District may suspend the employee with pay or allow them to remain working.

³ "State board approval" means a license, certificate, approval not requiring a teaching certificate, or other evidence of qualifications to hold a particular position in a school district or intermediate school district or in a nonpublic school, other than a teacher's certificate subject to section 1535a, that is issued to a person by the state board or the superintendent of public instruction.

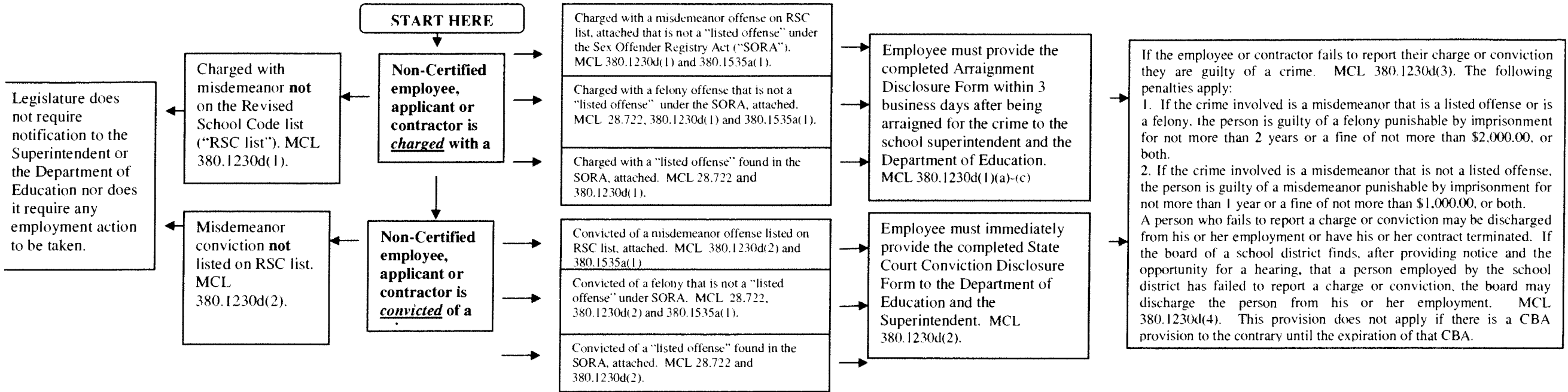
Certified/State Board Approved Employees Pay and Tenure Implications Upon District's Notice of Charge and Conviction of a Crime



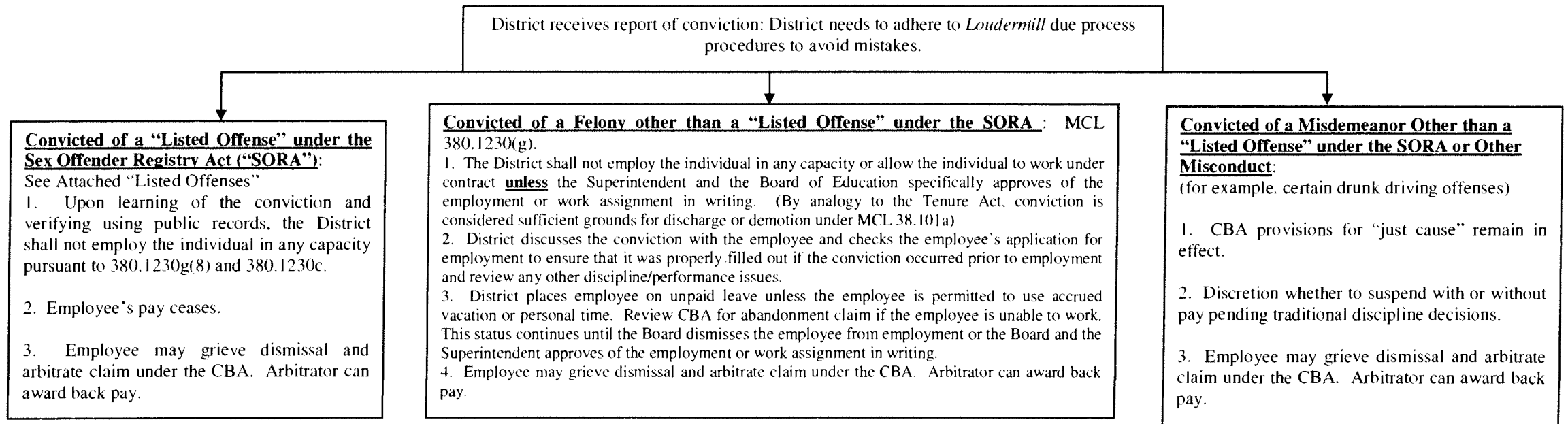
Employment Consequences of Certified/State Board Approved Employee's Conviction



Non-Certified Employee Pay and Employment Implications Upon District's Notice of Charge and Conviction of a Crime



Employment Consequences of Non-Certified Employee's Conviction



Attachment to the Collins & Blaha P.C. Flowcharts

Revised School Code list (“RSC list”) for reporting charge or conviction and for suspension of a teaching certificate or state board approval

A school employee, applicant, or contractor must report to the District and the Department of Education if he or she is charged or convicted of the following crimes¹:

1. Any crime listed on the Michigan Sex Offender Registry Act.
2. Any other felony.
3. Any of the following misdemeanors:
 - a. Third- or fourth-degree child abuse or an attempt to commit that offense.
 - b. A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
 - c. A misdemeanor violation of Section 7410 of the Public Health Code (which prohibits the delivery of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine, by a person who is 18 or older to a person who is under 18 and at least three years younger than the offender, or delivery on or within 1,000 feet of school property).
 - d. Breaking and entering MCL 750.115
 - e. Allowing a minor to possess or consume alcohol at a social gathering on premises under the offender’s control. MCL 750.141a
 - f. Accosting, enticing or soliciting child for immoral purposes MCL 750.145a.
 - g. Indecent exposure MCL 750.335a
 - h. Larceny from a vacant dwelling MCL 750.359
 - i. A misdemeanor violation of section 701 of the Michigan liquor control code MCL 436.1701 (a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the person is a minor)
 - j. Assault and battery MCL 750.81,
 - k. A person who commits assault without a weapon and inflicts serious or aggravated injury upon that individual without intending to commit murder or to inflict great bodily harm less than murder MCL 750.81a
 - l. Using a computer to commit a specified crime MCL 750.145d

¹ The Superintendent must report to the Department of Education when a teacher is convicted, but not charged, of crimes on the RSC list for the purpose of possible suspension and revocation of their teaching certification or state board approval.

The term “listed offense” from the Sex Offenders Registry Act (“SORA”), MCL 28.722, includes the following.

Employees, applicants and contractors are required to report the following crimes upon a charge or conviction. If an employee is convicted of the following crimes they must be discharged and register as a convicted sex offender:

1. Accosting, enticing or soliciting child for immoral purposes, MCL 750.145a (felony)
2. Accosting, enticing or soliciting child for immoral purposes; second or subsequent offenses, MCL 750.145b (felony)
3. Child sexually abusive activity or material, MCL 750.145c (felony)
4. Crime against nature or sodomy, MCL 750.158, if a victim is an individual less than 18 years of age (felony)
5. A third or subsequent conviction of any combination of the following:
 - A. A “disorderly person”, MCL 750.167(1)(f), a person who is engaged in indecent or obscene conduct in a public place. (misdemeanor)
 - B. Indecent exposure, MCL 750.335a (misdemeanor)
 - C. A local ordinance of a municipality substantially corresponding to a section described in sub-subparagraph (A) or (B).
6. Except for a juvenile disposition or adjudication, Gross indecency; between male persons under MCL 750.338, Gross indecency; between female persons under MCL 750.338a, and Gross indecency; between male and female persons under MCL 750.338b, if a victim is an individual less than 18 years of age. (felony) The term “gross indecency,” prohibits oral and manual sex acts committed without consent or with person under age of consent or any ultimate sexual act committed in public. *People v. Lynch*, 179 Mich.App. 63 (1989).
7. Kidnapping, MCL 750.349, if a victim is an individual less than 18 years of age. (felony)
8. Kidnapping, child under 14, MCL 750.350. (felony)
9. Soliciting, accosting, or inviting to commit prostitution or immoral act, MCL 750.448 (misdemeanor for first two, guilty of this crime with two or more misdemeanors is a felony), if a victim is an individual less than 18 years of age.
10. Pandering, MCL 750.455, which is defined as any person who shall procure a female inmate for a house of prostitution; or who shall induce, persuade, encourage, inveigle or entice a female person to become a prostitute, etc. (felony)
11. First degree criminal sexual conduct, MCL 750.520b (felony)
12. Second degree criminal sexual conduct, MCL 750.520c (felony)
13. Third degree criminal sexual conduct, MCL 750.520d (felony)
14. Fourth degree criminal sexual conduct, MCL 750.520e (misdemeanor)
15. Assault with intent to commit criminal sexual conduct, MCL 750.520g. (felony)
16. Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.
17. An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in MCL 750.10a.
18. An attempt or conspiracy to commit an offense described above.
19. An offense substantially similar to an offense described above under a law of the United States, any state, or any country or under tribal or military law.

**MICHIGAN STATE BOARD OF EDUCATION MODEL
ANTI-BULLYING POLICY APPROVED SEPTEMBER 12, 2006**

The Michigan State Board of Education adopted a Model Anti-Bullying Policy on September 12, 2006. The Board adopted the policy in response to current proposed legislation which would require school districts to adopt anti-bullying policies. The proposed legislation requires the Department of Education to develop a model policy for the prevention of harassment or bullying.

MICHIGAN
STATE BOARD OF EDUCATION

MODEL ANTI-BULLYING POLICY

The (fill in district name) board of education prohibits acts of harassment or bullying. The board of education has determined that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Harassment or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment. Demonstration of appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment or bullying is expected of administrators, faculty, staff, and volunteers to provide positive examples for student behavior.

"Harassment or bullying" is any gesture or written, verbal, graphic, or physical act (including electronically transmitted acts – i.e. internet, cell phone, personal digital assistant (pda), or wireless hand held device) that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression; or a mental, physical, or sensory disability or impairment; or by any other distinguishing characteristic. Such behavior is considered harassment or bullying whether it takes place on or off school property, at any school-sponsored function, or in a school vehicle.

"Harassment" is conduct that meets all of the following criteria:

- is directed at one or more pupils;
- substantially interferes with educational opportunities, benefits, or programs of one or more pupils;
- adversely affects the ability of a pupil to participate in or benefit from the school district's educational programs or activities because the conduct, as reasonably perceived by the pupil, is so severe, pervasive, and objectively offensive as to have this effect; and,
- is based on a pupil's actual or perceived distinguishing characteristic (see above), or is based on an association with another person who has or is perceived to have any of these characteristics.

"Bullying" is conduct that meets all of the following criteria:

- is directed at one or more pupils;
- substantially interferes with educational opportunities, benefits, or programs of one or more pupils;
- adversely affects the ability of a pupil to participate in or benefit from the school district's educational programs or activities by placing the pupil in reasonable fear of physical harm or by causing emotional distress; and,
- is based on a pupil's actual or perceived distinguishing characteristic (see above), or is based on an association with another person who has or is perceived to have any of these characteristics.

The (fill in district name) board of education expects students to conduct themselves in a manner in keeping with their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students, school staff, volunteers, and contractors.

The (fill in district name) board of education believes that standards for student behavior must be set cooperatively through interaction among the students, parents and guardians, staff, and community members of the school district, producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for district and community property on the part of students, staff, and community members.

The (fill in district name) board of education believes that the best discipline is self-imposed, and that it is the responsibility of staff to use disciplinary situations as opportunities for helping students learn to assume responsibility and the consequences of their behavior. Staff members who interact with students shall apply best practices designed to *prevent* discipline problems and encourage students' abilities to develop self-discipline.

Since bystander support of harassment or bullying can support these behaviors, the district prohibits both active and passive support for acts of harassment or bullying. The staff should encourage students to support students who walk away from these acts when they see them, constructively attempt to stop them, or report them to the designated authority.

The (fill in district name) board of education requires its school administrators to develop and implement procedures that ensure *both* the appropriate consequences *and* remedial responses to a student or staff member who commits one or more acts of harassment or bullying. The following factors, at a minimum, shall be given full consideration by school administrators in the development of the procedures for determining appropriate consequences and remedial measures for each act of harassment or bullying.

Factors for Determining Consequences

- Age, development, and maturity levels of the parties involved
- Degree of harm
- Surrounding circumstances
- Nature and severity of the behavior(s)
- Incidences of past or continuing pattern(s) of behavior
- Relationship between the parties involved
- Context in which the alleged incident(s) occurred

Factors for Determining Remedial Measures

Personal

- Life skill competencies
- Experiential deficiencies
- Social relationships
- Strengths
- Talents
- Traits
- Interests
- Hobbies
- Extra-curricular activities
- Classroom participation
- Academic performance

Environmental

- School culture
- School climate
- Student-staff relationships and staff behavior toward the student
- General staff management of classrooms or other educational environments
- Staff ability to prevent and de-escalate difficult or inflammatory situations
- Social-emotional and behavioral supports
- Social relationships
- Community activities
- Neighborhood culture
- Family situation

Consequences and appropriate remedial actions for a student or staff member who commits one or more acts of harassment or bullying may range from positive behavioral interventions up to and including suspension or expulsion, in the case of a student, or suspension or termination in the case of an employee, as set forth in the board of education's approved code of student conduct or employee handbook.

Consequences for a student who commits an act of harassment or bullying shall be unique to the individual incident and will vary in method and severity according to the nature of the behavior, the developmental age of the student, and the student's history of problem behaviors and performance, and must be consistent with the board of education's approved code of student conduct. Remedial measures shall be designed to: *correct the problem behavior; prevent another occurrence* of the behavior; and *protect the victim* of the act. Effective discipline should employ a school-wide approach to adopt a rubric of bullying offenses and the associated consequences. The consequences and remedial measures may include, but are not limited to, the examples listed below:

Examples of Consequences

- Admonishment
- Temporary removal from the classroom
- Loss of privileges
- Classroom or administrative detention
- Referral to disciplinarian
- In-school suspension during the school week or the weekend, for students
- Out-of-school suspension
- Legal action
- Expulsion or termination

Examples of Remedial Measures

Personal

- Framing the aggressive behavior as a failed attempt to solve a real problem or reach a goal. The adult assists the misbehaving student to find a better way to solve the problem or meet the goal.
- Restitution and restoration
- Transformative conferencing/restorative justice
- Peer support group
- Corrective instruction or other relevant learning or service experience
- Supportive discipline to increase accountability for the bullying offense
- Supportive interventions, including participation of an Intervention and Referral Services team, peer mediation, etc.
- Behavioral assessment or evaluation, including, but not limited to, a referral to a Child Study Team, as appropriate

- Behavioral management plan, with benchmarks that are closely monitored
- Involvement of school disciplinarian
- Student counseling
- Parent conferences
- Student treatment
- Student therapy

Environmental (Classroom, School Building, or School District)

- Set a time, place, and person to help the bully reflect on the offending behavior, maintaining an emotionally-neutral and strength-based approach
- School and community surveys or other strategies for determining the conditions contributing to harassment, intimidation, or bullying
- School culture change
- School climate improvement
- Adoption of research-based, systemic bullying prevention programs
- Modifications of schedules
- Adjustments in hallway traffic
- Modifications in student routes or patterns traveling to and from school
- Targeted use of monitors (e.g., hallway, cafeteria, bus)
- General professional development programs for certificated and non-certificated staff
- Professional development plans for involved staff
- Disciplinary action for school staff who contributed to the problem
- Parent conferences
- Referral to Family counseling
- Involvement of parent-teacher organizations
- Involvement of community-based organizations
- Development of a general bullying response plan
- Peer support groups
- Law enforcement involvement (e.g., school resource officer, juvenile officer)

The (fill in district name) board of education requires the principal and/or the principal's designee at each school to be responsible for receiving complaints alleging violations of this policy. All school employees are required to report alleged violations of this policy to the principal or the principal's designee. All other members of the school community, including students, parents, volunteers, and visitors, are encouraged to report any act that may be a violation of this policy. Reports may be made anonymously, but formal disciplinary action *may not* be based solely on the basis of an anonymous report.

The (fill in district name) board of education requires the principal and/or the principal's designee to be responsible for determining whether an alleged act constitutes a violation of this policy. In so doing, the principal and/or the principal's designee shall conduct a prompt, thorough, and complete investigation of each alleged incident. The investigation is to be completed within three school days after a report or complaint is made.

The (fill in district name) board of education prohibits reprisal or retaliation against any person who reports an act of harassment or bullying. The consequences and appropriate remedial action for a person who engages in reprisal or retaliation shall be determined by the administrator after consideration of the nature, severity, and circumstances of the act.

The (fill in district name) board of education prohibits any person from falsely accusing another as a means of harassment or bullying. The consequences and appropriate remedial action for a *person* found to have falsely accused another as a means of harassment or bullying may range from positive behavioral interventions up to and including suspension or expulsion. Consequences and appropriate remedial action for a *school employee* found to have falsely accused another as a means of harassment or bullying shall be disciplined in accordance with district policies, procedures, and agreements.

The (fill in district name) board of education requires school officials to annually disseminate the policy to all school staff, students, and parents, along with a statement explaining that it applies to all applicable acts of harassment and bullying that occur on school property, at school-sponsored functions, or on a school bus. The chief school administrator shall develop an annual process for discussing the school district policy on harassment and bullying with students and staff.

The school district shall incorporate information regarding the policy against harassment or bullying into each school employee training program and handbook.

Adopted September 12, 2006