

Michigan School Discipline

The State of (Non)-Enforcement

By Charles D. Hobbs

At a Glance

Fifty-five percent of all expulsions in Michigan involve students of color. Unequal enforcement of due process and recently reformed state laws are the driving force behind that disparity and Michigan's contribution to the school-to-prison-pipeline, but there are solutions.



Michigan students have been subjected to overly harsh zero-tolerance laws and policies for more than three decades. Evidence-based studies on the effect of those laws and policies have shown them to be counterproductive to the goals of improving school safety, academic culture, and racial equality,¹ earning Michigan a reputation as having one of the toughest discipline regimes in the nation.²

Overreliance on exclusionary discipline, racial inequity, lack of oversight, unclear due process requirements, and non-enforcement of recent state law reforms are largely responsible for that reputation. Reform of disciplinary hearing procedures and enforcement of recently reformed laws will aid in ending Michigan's school-to-prison pipeline.

Michigan acknowledges shortcomings; more is needed

Michigan education leaders have acknowledged these past and current shortcomings. The Michigan State Board of Education (SBE) amended its 2013–2015 mission statement as follows:

Numerous studies document that exclusionary discipline practices are implemented disproportionately against students at higher risk of school dropout, including young men of color, special education students, and students from low income households. Numerous studies have further shown that exclusionary discipline often sets the stage for student disenfranchisement, academic failure, and dropout. The cost of this negative cycle, also well-documented, is too great.³



Despite improvement over past years, Michigan suspended approximately 119,400 K–12 students and expelled another 2,299 in the 2015–2016 school year.⁴ Data reveals racial disparity in those suspensions and expulsions. Black students were 4.1 times more likely, Latino students 1.6 times more likely, and multiracial students 2.2 times more likely to be suspended than their white counterparts.⁵ Students with disabilities were twice as likely to be suspended as students without disabilities.⁶ Equally alarming, those incidents generated 3,670 referrals to the criminal justice system.⁷ The SBE has acknowledged the importance of collecting exclusionary discipline data and adopting equitable policy.

In 2019, at the urging of advocacy groups, the SBE adopted a resolution to continue following 2014 federal guidance designed to further civil rights and improve school climate despite its rescission by the Trump administration.⁸ One key provision of that package was detailed data collection. To its credit, prior to adopting that resolution the SBE added race reporting for expulsions⁹ and made the information available on its parent dashboard website.¹⁰ However, despite recent reforms, data reveals that during the 2018–2019 school year, non-white students accounted for 55 percent of all expulsions.¹¹

Reforms to zero tolerance still face opposition

In 2017, Michigan enacted a package of bills referred to as the Rethink Discipline bills¹² that made crucial changes to Michigan's Revised School Code¹³ and were expected to find alternative solutions to exclusionary punishments. Those changes included restricting the offenses that mandate expulsion; decreasing expulsion thresholds to removals of 60 days or more; consideration of seven factors before exclusion; and a rebuttable presumption that suspension for more than 10 days is not justified unless it can be demonstrated that factors were considered.¹⁴

The seven factors include age; discipline history; whether the student has a disability; the seriousness of the offense; whether the safety of any pupil or staff member was threatened; whether restorative practices will be used; and whether a lesser intervention would properly address the violation.¹⁵ The factors have the potential to reveal a more complete picture of the student and the incident, identify potential root causes of behavior, and inform appropriate alternative solutions to overly harsh, racially disparate, exclusionary punishments.

When performed well, consideration of the factors aids administrators in seeing those students for who they are—children.

Despite the efficacy of these reforms, advocates experienced opposition to implementation. Peri Stone-Palmquist, executive director of the Student Advocacy Center, commented on that opposition: “We have had districts and charters tell advocates that they would not consider the seven

factors at all,” adding that there is a “lack of understanding of lesser interventions and the persistent belief that lengthy removals remain necessary.”¹⁶

Additionally, the Michigan Association of School Personnel and Administrators posted on its website that “consideration of these factors is required only for suspensions and expulsions under the Revised School Code, not for suspensions or expulsions under Board Policy or a Student Code of Conduct.”¹⁷ While districts have authority to create local policy and codes of conduct,¹⁸ local policies or codes cannot subrogate state law and subvert the Rethink Discipline bills’ express purpose and intent to require considering the seven factors.¹⁹

Often, students are unaware that a district must both consider and demonstrate consideration of these seven factors.²⁰ Schools rarely inform students of these requirements and advocates often see cursory, checkbox-type forms from districts that don't require, nor allow space for, detailed and thoughtful consideration.²¹

Without meaningful consideration of the seven factors, the promise of the Rethink Discipline bills will remain unrealized.

Due process protections are ill defined and haphazardly enforced

Thanks in part to a food fight in the early '70s, students are entitled to basic due process protections. The United States Supreme Court in *Goss v. Lopez*²² held that if a state provides a public education to its citizenry, students have a protected property interest in that education and a liberty interest in their reputation.²³ The Court found removals for 10 days is not de minimus and, therefore, demands basic due process protections²⁴ which include notice of the charges, an explanation of the evidence against the student, and an opportunity to present the student's side of the story.²⁵ As for longer removals, the Court stated, “Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”²⁶ However, the Court declined to define the phrase “more formal procedures.” The vagueness of that phrase still affects disciplinary hearings in Michigan.

As such, hearing procedures are created by each school district and vary across the state. Wide differences can be found in the notice to students, access to evidence, who determines responsibility and punishment, and appeal rights. As discussed below, there is a need for consistent procedural justice in discipline hearings.

Notice

At a minimum, notice should contain the allegations of misconduct and summary of evidence and should be provided within a reasonable time to prepare a defense. Advocates report that parents often receive notice for a hearing



without adequate time to arrange attendance, prepare a defense, and obtain a representative (if they know they can bring one). Further, student handbooks and hearing notices often fail to include information concerning students' rights and hearing procedures, leaving students and parents unaware and unprepared.

Impartial tribunal

An impartial tribunal is required in disciplinary hearings,²⁷ yet advocates (including the author) experience inconsistencies and conflicts in who determines fault and punishment. In one district, responsibility and punishment were decided by one school board member along with the superintendent and principal, who were both involved in investigating the offense. While districts typically conduct hearings in front of the full school board, conflicts often arise.

For example, a student faced expulsion for a marijuana charge that occurred after hours and off school grounds. The arresting officer was a school board member. Despite the conflict, the board member was allowed to present his opinion of the student during the hearing, labeling the student a "bad kid." He was then allowed to vote on the student's culpability and appropriate punishment. The student was expelled.

Another conflict encountered by advocates is the role of hearing officer often falling to the school district's attorney. This practice raises questions of impartiality and potential ethics issues.

Access to evidence

As an advocate, the author has often experienced relying on video footage and student statements as evidence of alleged misconduct. However, students and advocates are often unaware of the evidence or not allowed access to it until it is presented at the hearing, if at all.

To illustrate, this author advocated for a student facing expulsion for alleged threats made to a group of adolescent boys after being rejected from joining their play group that had assigned military-style ranks to its members. At the hearing, the district presented a transcribed collection of two to three sentences extracted from each of the boys' written statements. The excerpts supported the allegations that the disciplined

student was the sole aggressor and the other boys did nothing to provoke his reaction or to escalate the situation. The partial statements were not made available prior to the hearing; the full statements were not produced.

Advocate-dependent due process

Often, the level of due process afforded to a student depends on the presence of an advocate. Parents are typically uninformed about students' rights, leaving those without an advocate at a severe disadvantage.²⁸

Practical solutions

School districts are charged with the very difficult duty of balancing school safety and finding equitable solutions to correct behavior. Some schools have taken reforms seriously and have consulted with organizations such as the Student Advocacy Center to reduce exclusionary punishments.

Fault for our discipline system's deficiencies doesn't fall solely on the shoulders of our school districts, and there are solutions. Legislation can address due process deficiencies. The only option currently available to excluded students for redress is the courts; there is no state agency enforcement

mechanism, and the expense of litigation has a chilling effect on students' rights. Amending the Revised School Code to include due process protections, hearing procedures, and appeal rights would promote best practices and ensure fundamental fairness for all students.

Solutions for consistent application of due process and the Rethink Discipline laws need to be economically viable and efficient to reduce time lost from educational instruction. Creating a complaint process through the Michigan Department of Education can do both. Although it may require legislation, administrative review will help ensure that all districts are appropriately considering the factors and satisfying due process.

These reforms are an investment in Michigan's future. Unfortunately, the current pandemic stresses an already overburdened system as schools add COVID-related offenses to codes of conduct, thereby exacerbating the urgent need for reforms. Overuse of exclusionary discipline has real costs for Michiganders in higher dropout rates, increased incarceration, lower lifetime earnings, and reliance on government assistance.²⁹

With reform, we can dramatically diminish the injurious effects that exclusionary discipline exacts on our state's future and help keep our promise of opportunity and equality for all Michigan children. ■

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ENDNOTES

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