

HOUSE BILL No. 4676

May 24, 2011, Introduced by Reps. Rutledge, Jackson, Howze, Stanley, Liss, Cavanagh, Durhal and Stallworth and referred to the Committee on Education.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

1 punishment upon any pupil under any circumstances.

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

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

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

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

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

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

22 ~~—— (f) To protect property.~~ **IN AN EMERGENCY SITUATION WHEN A**
23 **PUPIL'S UNPREDICTABLE, SPONTANEOUS BEHAVIOR CAUSES A THREAT OF**
24 **IMMINENT, SERIOUS PHYSICAL HARM TO THE PUPIL OR OTHERS AND THE USE**
25 **OF PHYSICAL FORCE IS NECESSARY TO ENSURE THE SAFETY OF THE PUPIL OR**
26 **OTHERS, WHEN THE BEHAVIOR COULD NOT BE IMMEDIATELY PREVENTED BY ANY**
27 **OTHER LESS RESTRICTIVE MEASURE BECAUSE THE LESS RESTRICTIVE MEASURE**

1 HAS PROVED TO BE INEFFECTIVE IN THAT INSTANCE, AND WHEN THE FORCE
2 IS NOT PROHIBITED BY THIS ACT. REASONABLE PHYSICAL FORCE MAY BE
3 USED IN 1 OR MORE OF THE FOLLOWING SITUATIONS:

4 (A) TO BREAK UP A FIGHT.

5 (B) TO TAKE A WEAPON AWAY FROM A PUPIL.

6 (C) AS THE BRIEF HOLDING BY AN ADULT IN ORDER TO CALM OR
7 COMFORT.

8 (D) AS THE MINIMUM CONTACT NECESSARY TO PHYSICALLY ESCORT A
9 PUPIL FROM 1 AREA TO ANOTHER.

10 (E) WHILE ASSISTING A PUPIL IN COMPLETING A TASK OR RESPONSE
11 IF THE PUPIL DOES NOT RESIST OR RESISTANCE IS MINIMAL IN INTENSITY
12 OR DURATION.

13 (F) TO HOLD A PUPIL FOR A BRIEF TIME IN ORDER TO PREVENT AN
14 IMPULSIVE BEHAVIOR THAT THREATENS THE PUPIL'S IMMEDIATE SAFETY.

15 ~~(5) A person employed by or engaged as a volunteer or~~
16 ~~contractor by a local or intermediate school board or public school~~
17 ~~academy who exercises necessary reasonable physical force upon a~~
18 ~~pupil, or upon another person of school age in a school related~~
19 ~~setting, as described in subsection (4) is not liable in a civil~~
20 ~~action for damages arising from the use of that physical force and~~
21 ~~is presumed not to have violated subsection (3) by the use of that~~
22 ~~physical force. This subsection~~ **SECTION** ~~does not alter or limit a~~
23 ~~person's immunity from liability provided under 1964 PA 170, MCL~~
24 ~~691.1401 to 691.1415~~ **691.1419.**

25 (6) A person who willfully or through gross negligence
26 violates subsection (3) or who willfully or through gross
27 negligence violates subsection (4) may be appropriately disciplined

1 by his or her school board or public school academy. This
2 subsection does not limit a school board's or public school
3 academy's authority to discipline an employee for a violation of
4 its own policies.

5 (7) In determining whether an employee, volunteer, or
6 contractor has acted in accordance with subsection (4), deference
7 shall be given to reasonable good-faith judgments made by that
8 person **IF HIS OR HER ACTIONS ARE CONSISTENT WITH A POLICY THAT HAS**
9 **BEEN ADOPTED BY THE GOVERNING BOARD OF THE LOCAL OR INTERMEDIATE**
10 **SCHOOL DISTRICT OR PUBLIC SCHOOL ACADEMY.**

11 (8) A local or intermediate school district or a public school
12 academy shall develop and implement a code of student conduct **AND A**
13 **COMPREHENSIVE PLAN REGARDING THE USE OF PHYSICAL FORCE** and shall
14 enforce **AND COMPLY WITH** its provisions with regard to pupil
15 misconduct in a classroom, elsewhere on school premises, on a
16 school bus or other school-related vehicle, or at a school
17 sponsored activity or event whether or not it is held on school
18 premises.

19 (9) The department shall develop a model list of alternatives
20 to the use of corporal punishment. This model list shall be
21 developed in consultation with organizations that represent the
22 interests of teachers, school employees, school boards, school
23 administrators, pupils, parents, and child advocates, plus any
24 other organization that the state board of education may wish to
25 consult. The department shall send this model list to each school
26 district, public school academy, and intermediate school district
27 in the state and to each nonpublic school in the state that

1 requests it. A local or intermediate school board or public school
2 academy shall approve and cause to be distributed to each employee,
3 volunteer, and contractor a list of alternatives to the use of
4 corporal punishment. Upon request, the department of education
5 shall provide assistance to schools in the development of programs
6 and materials to implement this section.

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

9 SEC. 1312A. (1) ALL PUPILS HAVE THE RIGHT TO BE TREATED WITH
10 DIGNITY AND RESPECT. ALL PUPILS, REGARDLESS OF POSSIBLE PHYSICAL,
11 MENTAL, OR EMOTIONAL IMPAIRMENT, HAVE THE RIGHT TO BE PROVIDED WITH
12 AN APPROPRIATE, SAFE, AND HEALTHY EDUCATIONAL ENVIRONMENT. EVERY
13 PUPIL IS ENTITLED TO BE FREE FROM MENTAL AND PHYSICAL ABUSE; FROM
14 LIFE-THREATENING, MECHANICAL, AND CHEMICAL RESTRAINTS; FROM
15 SECLUSION; AND FROM THE USE OF AVERSIVE BEHAVIOR CONTROL, UNLESS
16 SPECIFICALLY ALLOWED UNDER THIS SECTION.

17 (2) A SCHOOL EMPLOYEE OR SCHOOL OFFICIAL SHALL NOT USE OR
18 CONDONE THE USE OF, AND THE GOVERNING BOARD OF A SCHOOL DISTRICT,
19 INTERMEDIATE SCHOOL DISTRICT, OR PUBLIC SCHOOL ACADEMY SHALL IMPOSE
20 APPROPRIATE DISCIPLINE ON A SCHOOL EMPLOYEE OR OFFICIAL WHO USES OR
21 CONDONES THE USE OF, ANY OF THE FOLLOWING METHODS OF TREATING A
22 PUPIL:

23 (A) LIFE-THREATENING RESTRAINT. LIFE-THREATENING RESTRAINT
24 INCLUDES TOUCHING OR HOLDING OF A PUPIL BY ANOTHER PERSON CAUSING A
25 PERSONAL RESTRICTION THAT IMMOBILIZES OR REDUCES THE ABILITY OF A
26 PUPIL'S FREEDOM OF MOVEMENT AND THAT POSES A THREAT TO THE
27 FUNCTIONING OF THE PUPIL'S RESPIRATORY SYSTEM OR ABILITY TO SPEAK,

1 INCLUDING, BUT NOT LIMITED TO, PRONE RESTRAINT AND BASKET HOLD
2 RESTRAINTS.

3 (B) CHEMICAL RESTRAINT. CHEMICAL RESTRAINT INCLUDES ANY DRUG
4 OR MEDICATION THAT IS USED AS A RESTRAINT TO CONTROL BEHAVIOR OR
5 RESTRICT AN INDIVIDUAL'S FREEDOM OF MOVEMENT. CHEMICAL RESTRAINT
6 DOES NOT INCLUDE USE OF A DRUG OR MEDICATION THAT IS STANDARD
7 TREATMENT FOR THE INDIVIDUAL'S MEDICAL OR PSYCHIATRIC CONDITION.

8 (C) MECHANICAL RESTRAINT. MECHANICAL RESTRAINT INCLUDES ANY
9 DEVICE, MATERIAL, OR EQUIPMENT ATTACHED OR ADJACENT TO AN
10 INDIVIDUAL'S BODY THAT HE OR SHE CANNOT EASILY REMOVE AND THAT
11 RESTRICTS FREEDOM OF MOVEMENT OR NORMAL ACCESS TO THE INDIVIDUAL'S
12 BODY. MECHANICAL RESTRAINT DOES NOT INCLUDE A DEVICE, SUCH AS AN
13 ORTHOPEDICALLY PRESCRIBED DEVICE, SURGICAL DRESSINGS OR BANDAGES,
14 OR A PROTECTIVE HELMET, THAT INVOLVES THE PHYSICAL RESTRICTING OF
15 AN INDIVIDUAL TO PERMIT THE INDIVIDUAL TO PARTICIPATE IN ACTIVITIES
16 WITHOUT THE RISK OF PHYSICAL HARM TO THE INDIVIDUAL AND THAT IS
17 USED IN ACCORDANCE WITH A PHYSICIAN'S ORDERS.

18 (D) SECLUSION. SECLUSION INCLUDES CONFINEMENT OF AN INDIVIDUAL
19 ALONE IN AN AREA FROM WHICH THE INDIVIDUAL IS PREVENTED FROM
20 LEAVING. SECLUSION DOES NOT INCLUDE A TIME OUT IF THE TIME OUT IS
21 USED AS A BEHAVIOR SUPPORT TECHNIQUE THAT IS PART OF A PUPIL'S
22 BEHAVIOR SUPPORT PLAN AND INVOLVES THE TEMPORARY SEPARATION FROM
23 OTHER PUPILS FOR THE PURPOSE OF REGAINING SELF-CONTROL IN A SETTING
24 THAT HAS GREATER THAN 50 SQUARE FEET OF SPACE, THAT IS NOT LOCKED,
25 FROM WHICH THE PUPIL IS NOT PHYSICALLY OR OTHERWISE PREVENTED FROM
26 LEAVING, AND WHERE STAFF ARE FULLY VISIBLE AND ACCESSIBLE TO THE
27 PUPIL.

1 (E) AVERSIVE BEHAVIOR CONTROLS. AVERSIVE BEHAVIOR CONTROL
2 INCLUDES THE INTENTIONAL APPLICATION OF A NOXIOUS SUBSTANCE OR
3 STIMULUS THAT RESULTS IN PHYSICAL PAIN OR EXTREME DISCOMFORT. A
4 NOXIOUS SUBSTANCE OR STIMULUS CAN EITHER BE GENERALLY ACKNOWLEDGED
5 OR SPECIFIC TO THE PUPIL.

6 (3) A PERSON EMPLOYED BY OR ENGAGED AS A VOLUNTEER OR
7 CONTRACTOR BY A LOCAL OR INTERMEDIATE SCHOOL BOARD OR PUBLIC SCHOOL
8 ACADEMY SHALL USE PHYSICAL FORCE ON A PUPIL ONLY AS PROVIDED IN
9 SECTION 1312(4) AND THIS SUBSECTION. ALL OF THE FOLLOWING APPLY TO
10 THE USE OF PHYSICAL FORCE ON A PUPIL:

11 (A) THE SAFETY AND COMFORT OF THE PUPIL SHALL BE MAINTAINED
12 DURING THE USE OF THE PHYSICAL FORCE. THE PHYSICAL FORCE SHALL BE
13 DISCONTINUED AS SOON AS THE THREAT TO THE SAFETY OF THE PUPIL OR
14 ANOTHER NO LONGER EXISTS. PHYSICAL FORCE SHOULD AT ALL TIMES BE
15 CAREFULLY APPLIED AND MAY BE EASED BY DEGREES AS THE PUPIL CALMS
16 DOWN.

17 (B) IF THE USE OF PHYSICAL FORCE LASTS LONGER THAN 10 MINUTES,
18 THE FOLLOWING ARE REQUIRED:

19 (i) ADDITIONAL SUPPORT, SUCH AS CHANGE OF STAFF, INTRODUCING A
20 NURSE OR SPECIALIST, OR OBTAINING ADDITIONAL EXPERTISE.

21 (ii) DOCUMENTATION TO EXPLAIN THE EXTENSION OF PHYSICAL FORCE
22 BEYOND 10 MINUTES.

23 (C) WHILE USING PHYSICAL FORCE, THE PERSON SHALL DO ALL OF THE
24 FOLLOWING:

25 (i) INVOLVE APPROPRIATELY TRAINED KEY IDENTIFIED PERSONNEL TO
26 PROTECT THE CARE, WELFARE, DIGNITY, AND SAFETY OF THE PUPIL.

27 (ii) CONTINUALLY OBSERVE THE PUPIL FOR INDICATIONS OF PHYSICAL

1 DISTRESS AND SEEK MEDICAL ASSISTANCE IF THERE IS A CONCERN.

2 (iii) DOCUMENT OBSERVATIONS.

3 (D) PHYSICAL FORCE SHALL NOT BE USED IN PLACE OF APPROPRIATE
4 LESS RESTRICTIVE INTERVENTIONS. PHYSICAL FORCE SHALL BE USED IN A
5 MANNER THAT IS ALL OF THE FOLLOWING:

6 (i) SAFE.

7 (ii) APPROPRIATE.

8 (iii) PROPORTIONATE TO AND SENSITIVE TO ALL OF THE FOLLOWING:

9 (A) SEVERITY OF THE PUPIL'S BEHAVIOR.

10 (B) THE PUPIL'S CHRONOLOGICAL AND DEVELOPMENTAL AGE.

11 (C) THE PUPIL'S PHYSICAL SIZE.

12 (D) THE PUPIL'S GENDER.

13 (E) THE PUPIL'S MEDICAL CONDITION.

14 (F) THE PUPIL'S PSYCHIATRIC CONDITION.

15 (G) THE PUPIL'S PERSONAL HISTORY, INCLUDING ANY HISTORY OF
16 PHYSICAL OR SEXUAL ABUSE.

17 (E) AFTER ANY USE OF PHYSICAL FORCE, AN APPROPRIATE STAFF
18 MEMBER SHALL DEBRIEF AND CONSULT WITH THE PUPIL'S PARENTS, AND THE
19 PUPIL IF APPROPRIATE, REGARDING THE DETERMINATION OF FUTURE
20 ACTIONS. THIS CONSULTATION SHALL ADDRESS AT LEAST ALL OF THE
21 FOLLOWING QUESTIONS:

22 (i) WHAT PRECIPITATED THE BEHAVIOR THAT REQUIRED PHYSICAL
23 FORCE?

24 (ii) IS THERE ANY ANTICIPATION THAT THE BEHAVIOR WILL OCCUR
25 AGAIN?

26 (iii) WHAT IS THE SPECIFIC FOLLOW-UP ACTION?

27 (F) IF A PATTERN OF BEHAVIOR EMERGES, OR IS ANTICIPATED, THAT

1 MAY REQUIRE THE USE OF PHYSICAL FORCE IN THE FUTURE, APPROPRIATE
2 STAFF MEMBERS SHALL DO ALL OF THE FOLLOWING:

3 (i) DEVELOP OR REVISE A POSITIVE BEHAVIOR SUPPORT PLAN FOR THE
4 PUPIL TO REDUCE OR ELIMINATE THE NEED TO USE PHYSICAL FORCE.

5 (ii) DEVELOP AN ASSESSMENT AND PLANNING PROCESS CONDUCTED BY A
6 TEAM KNOWLEDGEABLE ABOUT THE PUPIL, INCLUDING AT LEAST ALL OF THE
7 FOLLOWING PARTICIPANTS:

8 (A) THE PUPIL'S PARENT.

9 (B) THE PUPIL, IF APPROPRIATE.

10 (C) SCHOOL STAFF MEMBERS WHO ARE RESPONSIBLE FOR
11 IMPLEMENTATION OF THE POSITIVE BEHAVIOR SUPPORT PLAN.

12 (D) ONE OR MORE OTHER PEOPLE WHO ARE KNOWLEDGEABLE IN
13 DEVELOPING A POSITIVE BEHAVIOR SUPPORT PLAN.

14 (G) PHYSICAL FORCE SHALL BE USED ONLY IN RESPONSE TO AN
15 EMERGENCY AS DEFINED IN THIS SECTION, AND NOT AS A PLANNED RESPONSE
16 FOR THE CONVENIENCE OF STAFF, AS DISCIPLINE OR PUNISHMENT, OR AS A
17 SUBSTITUTE FOR AN APPROPRIATE EDUCATIONAL PROGRAM.

18 (4) UPON REQUEST, THE DEPARTMENT SHALL PROVIDE ASSISTANCE TO
19 SCHOOLS IN THE DEVELOPMENT OF TRAINING PROGRAMS AND MATERIALS TO
20 IMPLEMENT THIS SECTION.

21 (5) A PERSON EMPLOYED BY OR ENGAGED AS A VOLUNTEER OR
22 CONTRACTOR BY A LOCAL OR INTERMEDIATE SCHOOL BOARD OR PUBLIC SCHOOL
23 ACADEMY WHO IS INVOLVED IN THE USE OF PHYSICAL FORCE ON A PUPIL
24 SHALL REPORT THE USE OF PHYSICAL FORCE AS FOLLOWS AND IN ACCORDANCE
25 WITH SUBSECTIONS (6) AND (7):

26 (A) VERBAL NOTIFICATION TO THE PUPIL'S PARENT OR GUARDIAN AS
27 SOON AS POSSIBLE.

1 (B) WRITTEN NOTIFICATION WITHIN 24 HOURS TO THE FOLLOWING
2 INDIVIDUALS:

3 (i) THE PUPIL'S PARENT OR GUARDIAN.

4 (ii) THE SCHOOL ADMINISTRATOR.

5 (iii) THE PUPIL'S RESIDENTIAL CARE PROVIDER, IF APPLICABLE.

6 (iv) THE DEPARTMENT.

7 (6) IF THE USE OF PHYSICAL FORCE EXTENDS LONGER THAN 10
8 MINUTES OR IF INJURY OCCURS AS A RESULT, THE SCHOOL ADMINISTRATOR
9 IN CHARGE OF THE PUPIL'S SCHOOL SHALL PROVIDE THE DEPARTMENT AND
10 THE DESIGNATED PROTECTION AND ADVOCACY SYSTEM FOR THE STATE WITH
11 WRITTEN DOCUMENTATION OF THE INCIDENT, AND SHALL KEEP THAT
12 INFORMATION CONFIDENTIAL IN ACCORDANCE WITH STATE AND FEDERAL
13 PRIVACY PROTECTIONS.

14 (7) EACH PERSON EMPLOYED BY OR ENGAGED AS A VOLUNTEER BY A
15 LOCAL OR INTERMEDIATE SCHOOL BOARD OR PUBLIC SCHOOL ACADEMY WHO IS
16 INVOLVED IN AN INCIDENT IN WHICH PHYSICAL FORCE IS USED ON A PUPIL
17 SHALL INDEPENDENTLY SUBMIT WRITTEN DOCUMENTATION OF THE INCIDENT.
18 EACH REPORT SHALL BE PLACED IN THE PUPIL'S FILE. THE WRITTEN
19 DOCUMENTATION AND NOTIFICATION SHALL INCLUDE ALL OF THE FOLLOWING:

20 (A) NAME OF THE PUPIL.

21 (B) NAME OF ALL PERSONNEL INVOLVED IN EMERGENCY INTERVENTION.

22 (C) DATE OF THE INCIDENT AND THE TIME THE INCIDENT BEGAN AND
23 TIME IT ENDED.

24 (D) DESCRIPTION OF EVENTS LEADING TO THE USE OF PHYSICAL FORCE
25 IN CLEAR AND OBJECTIVE TERMS, INCLUDING THE BEHAVIOR THAT PROMPTED
26 THE USE OF PHYSICAL FORCE.

27 (E) DESCRIPTION OF THE PHYSICAL FORCE THAT WAS USED.

1 (F) EFFORTS MADE TO DE-ESCALATE THE SITUATION AND ALTERNATIVES
2 TO PHYSICAL FORCE THAT WERE IMPLEMENTED BEFORE THE USE OF PHYSICAL
3 FORCE.

4 (G) INFORMATION DOCUMENTING PARENT CONTACT AND NOTIFICATION OF
5 PHYSICAL FORCE.

6 (H) NAME OF INDIVIDUAL WRITING REPORT.

7 (I) FOR PUPILS RECEIVING SPECIAL EDUCATION SERVICES,
8 DOCUMENTATION THAT AN INDIVIDUALIZED EDUCATION PROGRAM MEETING WAS
9 HELD TO ADDRESS THE PUPIL'S BEHAVIORAL NEEDS AFTER THE USE OF THE
10 PHYSICAL FORCE.

11 (J) IF PHYSICAL FORCE IS USED ON A PUPIL WHO IS NOT RECEIVING
12 SPECIAL EDUCATION SERVICES, DOCUMENTATION OF THE EVALUATION
13 REQUIRED UNDER SUBSECTION (8).

14 (8) IF PHYSICAL FORCE IS USED ON A PUPIL WHO IS NOT RECEIVING
15 SPECIAL EDUCATION SERVICES, THE LOCAL OR INTERMEDIATE SCHOOL
16 DISTRICT OR PUBLIC SCHOOL ACADEMY SHALL ENSURE THAT THE PUPIL IS
17 EVALUATED PROMPTLY TO DETERMINE IF THE PUPIL IS A PERSON WITH A
18 DISABILITY ELIGIBLE FOR SPECIAL EDUCATION SERVICES.

19 (9) THE GOVERNING BOARD OF A PUBLIC SCHOOL SHALL ENSURE THAT
20 ALL REPORTS OF INCIDENTS OF PHYSICAL FORCE ARE SUBMITTED TO THE
21 DEPARTMENT EVERY MONTH. AFTER PERSONAL INFORMATION HAS BEEN
22 REMOVED, THE DEPARTMENT SHALL POST THE REPORTS ON THE DEPARTMENT'S
23 WEBSITE. THE DEPARTMENT SHALL DETERMINE IF ADDITIONAL ACTION ON THE
24 PART OF THE SCHOOL IS WARRANTED, AND IF SO, SHALL NOTIFY THE SCHOOL
25 OF ANY REQUIRED ACTIONS WITHIN 30 CALENDAR DAYS OF RECEIPT OF THE
26 REPORT. IN ADDITION, THE MONTHLY REPORTS SHALL BE SUBMITTED TO THE
27 GOVERNING BOARD AND THE DESIGNATED PROTECTION AND ADVOCACY SYSTEM.

1 (10) THE STATE BOARD AND SCHOOL DISTRICTS, INTERMEDIATE SCHOOL
2 DISTRICTS, AND PUBLIC SCHOOL ACADEMIES ARE ENCOURAGED TO CREATE
3 POLICIES AND PROCEDURES GOVERNING THE USE OF PHYSICAL FORCE
4 CONSISTENT WITH THIS SECTION.

5 Enacting section 1. This amendatory act shall be known as the
6 Michael Renner Lewis III law.