

# HOUSE BILL NO. 5297

September 14, 2021, Introduced by Reps. Brabec, Camilleri, Aiyash and Cavanagh and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled  
"The revised school code,"  
(MCL 380.1 to 380.1852) by adding section 1310e.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1310e. (1) The board of a school district or intermediate  
2 school district or board of directors of a public school academy,  
3 or its designee, must appoint 1 or more independent decision  
4 makers. A hearing required under section 1310d(5) must be conducted  
5 by the independent decision maker or independent decision makers.

1 The independent decision maker or independent decision makers shall  
2 determine whether the pupil is to be subject to a suspension of  
3 more than 10 days, expulsion, or alternative placement for more  
4 than 10 days and make an alternative placement recommendation for  
5 the pupil, if appropriate. The independent decision maker or  
6 independent decision makers shall not do any of the following:

7 (a) Conduct an independent investigation of the disciplinary  
8 incident.

9 (b) Provide testimony at the hearing.

10 (c) Present evidence at the hearing.

11 (2) The independent decision maker or independent decision  
12 makers shall apply a preponderance of the evidence standard when  
13 rendering a decision under this section.

14 (3) The independent decision maker or independent decision  
15 makers shall do all of the following at a hearing under section  
16 1310d(5):

17 (a) Disclose to a pupil that it is possible, under applicable  
18 law, that any testimony the pupil gives in the presence of law  
19 enforcement officers may be used against the pupil in a court of  
20 law at a future date.

21 (b) Offer to the pupil, and the pupil's parent, legal  
22 guardian, or representative described in subsection (5), a closed  
23 hearing without the presence of the public, law enforcement  
24 officers, or security guards except as necessary for the safety of  
25 the participants in the hearing.

26 (c) Invite input from the pupil, and the pupil's parent, legal  
27 guardian, or representative described in subsection (5), for each  
28 of the factors listed in section 1310d(1).

29 (d) Make findings for each of the factors listed in section

1 1310d(1).

2 (4) Subject to state and federal privacy laws, the independent  
3 decision maker or independent decision makers shall, at the close  
4 of a hearing described in section 1310d(5), notify the pupil and  
5 the pupil's parent or legal guardian of a decision under this  
6 section and, within not more than 2 school days after the close of  
7 a hearing described in section 1310d(5), shall submit a written  
8 report of a decision under this section to the pupil and the  
9 pupil's parent or legal guardian and the appointing board of the  
10 school district or intermediate school district or board of  
11 directors of the public school academy, or its designee, that must  
12 contain all of the following:

13 (a) A finding of whether the evidence proves that the pupil  
14 committed the conduct in question.

15 (b) A justification for the finding of whether the evidence  
16 proves that the pupil committed the conduct in question.

17 (c) Clear and convincing evidence that the independent  
18 decision maker or independent decision makers considered each of  
19 the factors set forth in section 1310d(1).

20 (d) An alternative placement recommendation for the pupil, if  
21 appropriate.

22 (e) If an alternative placement recommendation is not  
23 appropriate, the rationale for that determination.

24 (f) An explanation of the pupil's appeal rights and the appeal  
25 procedures.

26 (5) A pupil has the right to be represented by an attorney or  
27 a non-attorney advocate at a hearing required under section  
28 1310d(5). An attorney or a non-attorney advocate may participate in  
29 the hearing on behalf of the pupil and take any action the pupil is

1 entitled to take.

2 (6) The board of the school district or intermediate school  
3 district or board of directors of the public school academy, or its  
4 designee, shall give the pupil and the pupil's parent or legal  
5 guardian a copy of the report required under subsection (4),  
6 subject to state and federal privacy laws, in a form and manner  
7 that is consistent with the form and manner in which similar  
8 communication is provided to the pupil or pupil's parent or legal  
9 guardian, and, subject to state and federal privacy laws, notice by  
10 telephone and by mail or email of all of the following:

11 (a) The disciplinary decision.

12 (b) A reinstatement plan, if appropriate.

13 (c) If a reinstatement plan is not appropriate, the rationale  
14 for that determination.

15 (7) This section does not diminish any rights of a pupil under  
16 federal law.

17 (8) Before implementing a disciplinary decision under this  
18 section for a pupil with an individualized education program, the  
19 board of a school district or intermediate school district or board  
20 of directors of a public school academy, or its designee, must  
21 invite the pupil to meet with his or her individualized education  
22 program team to determine how the school district, intermediate  
23 school district, or public school academy will provide a free and  
24 appropriate public education in a timely manner.

25 (9) An independent decision maker appointed under this section  
26 must not be any of the following:

27 (a) An individual who is directly involved in the education or  
28 care of the pupil for whom the hearing under section 1310d(5) is  
29 being conducted.

1 (b) An individual who witnessed the alleged misconduct  
2 resulting in the hearing under section 1310d(5).

3 (c) An individual who is involved in the investigation of the  
4 alleged misconduct resulting in the hearing under section 1310d(5).

5 (d) An individual who is involved in providing a  
6 recommendation as to discipline for the pupil. This subdivision  
7 does not prevent an independent decision maker from rendering a  
8 determination under subsection (1).

9 (e) An individual who has a personal connection or history of  
10 involvement with the pupil for whom the hearing under section  
11 1310d(5) is being conducted that conflicts with his or her ability  
12 to be impartial.

13 (10) As used in this section:

14 (a) "Alternative placement recommendation" means an  
15 individualized recommendation for a pupil to further the pupil's  
16 public education for the duration of the removal, including  
17 placement in any of the following:

18 (i) Another school building.

19 (ii) An alternative or disciplinary program.

20 (iii) A cyber school. As used in this subparagraph, "cyber  
21 school" means that term as defined in section 551.

22 (iv) An alternative, disciplinary, or virtual program offered  
23 by the school district in which the pupil is enrolled or was  
24 enrolled before the removal, a neighboring school district, or by  
25 an intermediate school district.

26 (v) Home-based or community-based instruction with district-  
27 provided curriculum.

28 (vi) An adult education program.

29 (vii) A community college if a dual-enrollment relationship

1 exists.

2 (b) "Individualized education program" means that term as  
3 defined in section 1414 of the individuals with disabilities  
4 education act, 20 USC 1414.

5 (c) "Individualized education program team" means that term as  
6 defined in section 1414 of the individuals with disabilities  
7 education act, 20 USC 1414.

8 Enacting section 1. This amendatory act does not take effect  
9 unless all of the following bills of the 101st Legislature are  
10 enacted into law:

11 (a) Senate Bill No. \_\_\_\_\_ or House Bill No.5298.

12 (b) Senate Bill No. \_\_\_\_\_ or House Bill No.5299.