

## THE REVISED SCHOOL CODE

### Act 451 of 1976

AN ACT to provide a system of public instruction and elementary and secondary schools; to revise, consolidate, and clarify the laws relating to elementary and secondary education; to provide for the organization, regulation, and maintenance of schools, school districts, public school academies, intermediate school districts, and other public school entities; to prescribe rights, powers, duties, and privileges of schools, school districts, public school academies, intermediate school districts, and other public school entities; to provide for the regulation of school teachers and certain other school employees; to provide for school elections and to prescribe powers and duties with respect thereto; to provide for the levy and collection of taxes; to provide for the borrowing of money and issuance of bonds and other evidences of indebtedness; to establish a fund and provide for expenditures from that fund; to make appropriations for certain purposes; to provide for and prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to provide for licensure of boarding schools; to prescribe penalties; and to repeal acts and parts of acts.

**History:** 1976, Act 451, Imd. Eff. Jan. 13, 1977 ;-- Am. 1977, Act 43, Imd. Eff. June 29, 1977 ;-- Am. 1988, Act 339, Imd. Eff. Oct. 18, 1988 ;-- Am. 1990, Act 161, Imd. Eff. July 2, 1990 ;-- Am. 1995, Act 289, Eff. July 1, 1996 ;-- Am. 2003, Act 179, Imd. Eff. Oct. 3, 2003 ;-- Am. 2016, Act 192, Imd. Eff. June 21, 2016

**Constitutionality:** The Michigan School Reform Act does not violate federal and state constitutional protections, *Moore v Detroit School Reform Board*, 293 F3d 352 (CA 6 2002).

**Compiler's Notes:** Senate Bill 393 (SB 393) was enrolled on August 13, 2003, and presented to the governor for her approval on September 8, 2003, at 5:00 p.m. On September 18, 2003, the senate requested that the bill be returned to the senate. The governor granted the senate's request on that same date and returned the bill to that body (without objections), where a motion was made to vacate the enrollment and the motion prevailed. On September 23, 2003, the house of representatives approved a motion to send a letter to the senate agreeing with the senate's request that the governor return SB 393. Neither the Senate Journal nor the House Journal entries reveal any other action taken by the house of representatives regarding the return of SB 393. In order to determine whether SB 393 had become law, as requested, the attorney general examined whether SB 393 was recalled by concurrent action of the house of representatives and the senate within the 14-day period afforded the governor for vetoing a bill under the last sentence of Const 1963, art IV, § 33: "SB 393 was presented to the Governor on September 8, 2003, at 5:00 p.m. The 14-day period afforded for consideration, measured in hours and minutes, therefore expired on September 22, 2003 at 5:00 p.m. While the Senate had acted to recall the bill within that 14-day period (on September 18, 2003), the House did not. Its action concurring in the request to recall SB 393 was not taken until September 23, 2003. In the absence of concurrent action by both houses of the Legislature within the 14-day period, SB 393 was not effectively recalled and 'further legislative action thereon' was not authorized." The attorney general declared that "in the absence of a return of the bill with objections, SB 393 therefore became law by operation of the last sentence of Const 1963, art IV, § 33." OAG, 2003, No. 7139 (October 2, 2003).

**Popular Name:** Act 451

**380.1307 Use of seclusion and restraint in public schools; uniform policy; objectives; right or remedy under state or federal law.**

Sec. 1307. (1) It is the intent of the legislature that sections 1307 to 1307h shall provide for a uniform policy regarding the use of seclusion and restraint in the public schools that accomplishes the following objectives:

- (a) Promotes the care, safety, welfare, and security of the school community and the dignity of each pupil.
  - (b) Encourages the use of proactive, effective, evidence-and research-based strategies and best practices to reduce the occurrence of challenging behaviors, eliminate the use of seclusion and restraint, and increase meaningful instructional time for all pupils.
  - (c) Ensures that seclusion and physical restraint are used only as a last resort in an emergency situation and are subject to diligent assessment, monitoring, documentation, and reporting by trained personnel.
  - (d) Clearly defines the terms "seclusion," "restraint," "emergency seclusion," and "emergency physical restraint" and clearly states the procedures for the use of emergency seclusion and emergency physical restraint.
- (2) Sections 1307 to 1307h do not limit any right or remedy of an individual under state or federal law.

**History:** Add. 2016, Act 394, Eff. Mar. 29, 2017.

**Popular name:** Act 451

**380.1307a Use of seclusion and restraint in public schools; adoption and implementation of local policy; noncompliance as violation of act.**

Sec. 1307a. Not later than December 1, 2016, the department shall develop a state policy regarding the use of seclusion and restraint in the public schools that includes all of the elements under sections 1307b to 1307h, along with guidelines as the department considers appropriate. Not later than the beginning of the 2017-18 school year, the board of a school district or intermediate school district or board of directors of a public school academy shall adopt and implement a local policy that is consistent with the state policy under this section. A person who fails to comply with this section or who fails to comply with any of the requirements of the state policy developed under this section is considered to have failed to comply with and to have violated this act.

**History:** Add. 2016, Act 395, Eff. Mar. 29, 2017.

**Popular name:** Act 451

**380.1307b Statement of prohibited practices.**

Sec. 1307b. The state policy under section 1307a shall include a clear statement that all of the following practices are prohibited for school personnel in the public schools of this state under all circumstances, including emergency situations:

- (a) Corporal punishment, as defined in section 1312.
- (b) The deprivation of basic needs.
- (c) Child abuse.
- (d) Seclusion, other than emergency seclusion.
- (e) The intentional application of any noxious substance or stimulus that results in physical pain or extreme discomfort. A noxious substance or stimulus is prohibited whether it is generally acknowledged or is specific to the pupil.
- (f) Mechanical restraint.
- (g) Chemical restraint.
- (h) Any restraint that negatively impacts breathing
- (i) Prone restraint
- (j) Physical restraint, other than emergency physical restraint
- (k) Any other type of restraint.

**History:** Add. 2016, Act 396, Eff. Mar. 29, 2017

**Popular Name:** Act 451

**380.1307c Emergency seclusion and emergency physical restraint; state policy; provisions.**

Sec. 1307c. The state policy under section 1307a shall include at least all of the following provisions concerning use of emergency seclusion and emergency physical restraint:

- (a) Emergency seclusion and emergency physical restraint may be used only under emergency situations and only if essential to providing for the safety of the pupil or safety of another.
- (b) Emergency seclusion and emergency physical restraint may not be used in place of appropriate less restrictive interventions.
- (c) Emergency seclusion and emergency physical restraint shall be performed in a manner that, based on research and evidence, is safe, appropriate, and proportionate to and sensitive to the pupil's severity of behavior, chronological and developmental age, physical size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse or other trauma.
- (d) A requirement that school personnel shall call key identified personnel for help from within the school building either immediately at the onset of an emergency situation or, if it is reasonable under the particular circumstances for school personnel to believe that diverting their attention to calling for help would increase the risk to the safety of the pupil or to the safety of others, as soon as possible once the circumstances no longer support such a belief.
- (e) A requirement that the school district, intermediate school district, or public school academy must ensure that substitute teachers are informed of and understand the procedures regarding use of emergency seclusion and emergency physical restraint. This requirement may be satisfied using online training and an online acknowledgement of understanding developed or approved by the department and completed by the substitute teacher.
- (f) Emergency seclusion should not be used any longer than necessary, based on research and evidence, to allow a pupil to regain control of his or her behavior to the point that the emergency situation necessitating the use of emergency seclusion is ended and generally no longer than 15 minutes for an elementary school pupil or 20 minutes for a middle school or high school pupil. If an emergency seclusion lasts longer than 15 minutes for an elementary school pupil or 20 minutes for a middle school or high school pupil, all of the following are required:
  - (i) Additional support, which may include a change of staff, or introducing a nurse, specialist, or additional key identified personnel.
  - (ii) Documentation to explain the extension beyond the time limit.
- (g) Emergency physical restraint should not be used any longer than necessary, based on research and evidence, to allow a pupil to regain control of his or her behavior to the point that the emergency situation necessitating the use of emergency physical restraint is ended and generally no longer than 10 minutes. If an emergency physical restraint lasts longer than 10 minutes, all of the following are required:
  - (i) Additional support, which may include a change of staff, or introducing a nurse, specialist, or additional key identified personnel.
  - (ii) Documentation to explain the extension beyond the time limit.
- (h) While using emergency seclusion or emergency physical restraint, school personnel must do all of the following:
  - (i) Involve key identified personal to protect the care, welfare, dignity, and safety of the pupil.
  - (ii) Continually observe the pupil in emergency seclusion or emergency physical restraint for indications of physical distress and seek medical assistance if there is a concern.
  - (iii) Document observations
  - (iv) Ensure to the extent practicable, in light of the ongoing emergency situation, that the emergency physical restraint does not interfere with the pupil's ability to communicate Using the pupil's primary mode of communication.
  - (v) Ensure that at all times during the use of emergency seclusion or emergency physical Restraint there are school personnel present who can communicate with the pupil using the pupil's primary mode of communication.

**History:** Add. 2016, Act 397, Eff. Mar. 29, 2017

**Popular name:** Act 451

**380.1307d Documentation and reporting of seclusion and restraint; state policy; provisions**

Sec. 1307d. The state policy under section 1307a shall include at least all of the following provisions concerning documentation and reporting of seclusion and restraint:

- (a) Each use of seclusion or restraint and the reason for each use shall be documented in writing and reported in writing or orally to the school building administration and the pupil's parent or guardian immediately and documented in a written report for each use of seclusion or restraint, including multiple uses within a given day, with this written report provided to the parent or guardian within the earlier of 1 school day or 7 calendar days.
- (b) After any use of seclusion or restraint, school personnel must make reasonable efforts to debrief and consult with the parent or guardian, or with the parent or guardian and the pupil, as appropriate, regarding the determination of future actions. The debriefing and consultation shall be done in accordance with department guidelines and documented on forms developed by the department.
- (c) If a pupil exhibits a pattern of behavior that poses a substantial risk of creating an emergency situation in the future that could result in the use of emergency seclusion or emergency physical restraint, school personnel are encouraged to do all of the following:
  - (i) Conduct a functional behavior assessment
  - (ii) Develop or revise a positive behavioral intervention and support plan to facilitate the elimination of the use of seclusion and restraint.
  - (iii) Develop an assessment and planning process conducted by a team knowledgeable about the pupil, including at least the parent or guardian; the pupil, if appropriate; the individuals responsible for implementation of the positive behavioral intervention and support plan; and individuals knowledgeable in positive behavioral intervention and support.

**History:** Add. 2016, Act 398, Eff. Mar. 29, 2017.

**Popular name:** Act 451

**380.1307e Development and implementation of emergency intervention plan; state policy; provisions.**

Sec. 1307e. The state policy under section 1307a shall include at least all of the following provisions concerning development and implementation of an emergency intervention plan:

- (a) If a pupil exhibits a pattern of behavior that poses a substantial risk of creating an emergency situation in the future that could result in the use of emergency seclusion or emergency physical restraint, school personnel should develop a written emergency intervention plan to protect the health, safety, and dignity of the pupil. The emergency intervention plan should be developed in partnership with the parent or guardian by a team that includes a teacher, an individual knowledgeable about the legally permissible use of emergency seclusion and emergency physical restraint, and an individual knowledgeable about the use of positive behavioral intervention and support to eliminate the use of seclusion and restraint. The emergency intervention plan should be developed and implemented by taking all of the following documented steps:
  - (i) Describe in detail the emergency intervention procedures.
  - (ii) Describe in detail the legal limits on the use of emergency seclusion and emergency physical restraint, including examples of legally permissible and prohibited use.
  - (iii) Make inquiry to the pupil's medical personnel, with parental consent, regarding any known medical or health contraindications for the use of emergency seclusion or emergency physical restraint.
  - (iv) Conduct a peer review by knowledgeable school personnel.
  - (v) Provide the parent or guardian with all of the following, in writing and orally:
    - (A) A detailed explanation of the positive behavioral intervention and support strategies that will be utilized to reduce the risk of the pupil's behavior creating an emergency situation.
    - (B) An explanation of what constitutes an emergency situation as defined in section 1307h, including examples of situations that would fall within the definition and situations that would fall outside the definition.

(C) A detailed explanation of the intervention procedures to be followed in an emergency situation, including the potential use of emergency seclusion and emergency physical restraint.

(D) A detailed explanation of the legal limits on the use of emergency seclusion and emergency physical restraint, including examples of legally permissible and prohibited use.

(E) A description of possible discomforts or risks.

(F) Answers to any questions.

(b) A pupil who is the subject of an emergency intervention plan should be told or shown the circumstances under which emergency seclusion or emergency physical restraint could be used.

(c) Emergency seclusion or emergency physical restraint must only be used in response to an ongoing emergency situation and not as a planned response for the convenience of school personnel, as discipline or punishment, or as a substitute for an appropriate educational program. The development of an emergency intervention plan shall be solely for the purpose of protecting the health, safety, and dignity of the pupil and does not expand the legally permissible use of emergency seclusion or emergency physical restraint.

**History:** Add. 2016, Act 399, Eff. Mar. 29, 2017

**Popular Name:** Act 451

### **380.1307f Data collection; state policy; provisions.**

Sec. 1307f. The state policy under section 1307a shall include at least all of the following provisions concerning data collection:

(a) A school district or public school academy, or an intermediate school district program in which pupils are enrolled, in accordance with department guidelines, shall collect and report data on and related to the use of restraint and seclusion in the school district, public school academy, or intermediate school district program. In collecting and reporting this data, a school district, public school academy, or intermediate school district program shall use existing data collection and reporting systems whenever possible. Incidents of use shall, at a minimum, be reported by race, age, grade, gender, disability status, medical condition, identity of the school personnel initiating the use of the restraint or seclusion, and identity of the school or program where the use occurred.

(b) All of the following should occur with respect to the data collected under subdivision (a):

(i) The data should be analyzed by the school and school district, public school academy, or intermediate school district in which the pupil is enrolled to determine the efficacy of the school's schoolwide system of behavioral support.

(ii) The data should be analyzed by the school and school district, public school academy, or intermediate school district in the context of attendance, suspension, expulsion, and dropout data.

(iii) The data should be analyzed by the school and school district, public school academy, or intermediate school district for the purposes of continuous improvement of training and technical assistance toward the elimination of seclusion and restraint.

(iv) The data should be analyzed by the school and school district, public school academy, or intermediate school district on a schedule determined by the department.

(v) The data should be reported electronically to the department in accordance with department guidelines by the school district, public school academy, or intermediate school district.

(c) The department shall make available redacted, aggregate data on the reported use of seclusion and restraint, compiled by school district, public school academy, and intermediate school district on a quarterly basis.

**History:** Add. 2016, Act 400, Eff. Mar. 29, 2017

**Popular Name:** Act 451

### **380.1307g Training; state policy; provisions.**

Sec. 1307g. The state policy under section 1307a shall include at least all of the following provisions concerning training, which may include online training that is developed or approved by the department:

(a) In accordance with department guidelines, a school district, intermediate school district, or public school academy shall implement a comprehensive training framework that includes awareness training for all school personnel who have regular contact with pupils and comprehensive training for key identified personnel as described in subdivision (b).

(b) A school district, intermediate school district, or public school academy shall identify sufficient key personnel to ensure that trained personnel are generally available for an emergency situation. Before using emergency seclusion or emergency physical restraint with pupils, key identified personnel who may have to respond to an emergency situation shall be trained in all of subparagraphs (i) to (xvi) as follows and should be trained in all of subparagraphs (xvii) to (xx) as follows:

- (i) Proactive practices and strategies that ensure the dignity of pupils.
- (ii) De-escalation techniques.
- (iii) Techniques to identify pupil behaviors that may trigger emergency situations.
- (iv) Related safety considerations, including information regarding the increased risk of injury to pupils and school personnel when seclusion or restraint is used.
- (v) Instruction in the use of emergency seclusion and emergency physical restraint.
- (vi) Identification of events and environmental factors that may trigger emergency situations.
- (vii) Instruction on the state policy on the use of seclusion and restraint.
- (viii) Description and identification of dangerous behaviors.
- (ix) Methods for evaluating the risk of harm to determine whether the use of emergency seclusion or emergency physical restraint is warranted.
- (x) Types of seclusion.
- (xi) Types of restraint.
- (xii) The risk of using seclusion or restraint in consideration of a pupil's known and unknown physical or mental health conditions or psychological limitations.
- (xiii) The effects of seclusion and restraint on all pupils.
- (xiv) How to monitor for and identify the physical signs of distress and the implications for pupils generally and for pupils with particular physical or mental health conditions or psychological limitations.
- (xv) How to obtain appropriate medical assistance.
- (xvi) Cardiopulmonary resuscitation and first aid.
- (xvii) Conflict resolution.
- (xviii) Mediation.
- (xix) Social skills training.
- (xx) Positive behavioral intervention and support strategies.

**History:** Add. 2016, Act 401, Eff. Mar. 29, 2017

**Popular Name:** Act 451

### **380.1307h Definitions.**

Sec. 1307h. As used in sections 1307 to 1307h:

(a) "Chemical restraint" means the administration of medication for the purpose of restraint.

(b) "De-escalation techniques" means evidence- and research-based strategically employed verbal or nonverbal interventions used to reduce the intensity of threatening behavior before, during, and after a crisis situation occurs.

(c) "Documentation" means documentation developed by the department that is uniform across the state.

(d) "Emergency physical restraint" means a last resort emergency safety intervention involving physical restraint that is necessitated by an ongoing emergency situation and that provides an opportunity for the pupil to regain self-control while maintaining the safety of the pupil and others.

Emergency physical restraint does not include physical restraint that is used for the convenience of school personnel, as a substitute for an educational program, as a form of discipline or punishment, as a substitute for less restrictive alternatives, as a substitute for adequate staffing, or as a substitute for school personnel training in positive behavioral intervention and support. Emergency physical restraint does not include a practice prohibited under section 1307b. Emergency physical restraint does not include physical restraint when contraindicated based on a pupil's disability, health care needs, or medical or psychiatric condition, as documented in a record or records made available to the school.

(e) "Emergency seclusion" means a last resort emergency safety intervention involving seclusion that is necessitated by an ongoing emergency situation and that provides an opportunity for the pupil to regain self-control while maintaining the safety of the pupil and others. To qualify as emergency seclusion, there must be continuous observation by school personnel of the pupil in seclusion, and the room or area used for confinement must comply with state and local fire and building codes; must not be locked; must not prevent the pupil from exiting the area if school personnel become incapacitated or leave that area; and must provide for adequate space, lighting, ventilation, viewing, and the safety and dignity of the pupil and others, in accordance with department guidelines. Emergency seclusion does not include the confinement of preschool children or of pupils who are severely self-injurious or suicidal; seclusion that is used for the convenience of school personnel, as a substitute for an educational program, as a form of discipline or punishment, as a substitute for less restrictive alternatives, as a substitute for adequate staffing, or as a substitute for school personnel training in positive behavioral intervention and support; or a practice prohibited under section 1307b. Emergency seclusion does not include seclusion when contraindicated based on a pupil's disability, health care needs, or medical or psychiatric condition, as documented in a record or records made available to the school.

(f) "Emergency situation" means a situation in which a pupil's behavior poses imminent risk to the safety of the individual pupil or to the safety of others. An emergency situation requires an immediate intervention.

(g) "Functional behavioral assessment" means an evidence- and research-based systematic process for identifying the events that trigger and maintain problem behavior in an educational setting. A functional behavioral assessment shall describe specific problematic behaviors, report the frequency of the behaviors, assess environmental and other setting conditions where problematic behaviors occur, and identify the factors that are maintaining the behaviors over time.

(h) "Key identified personnel" means those individuals who have received the mandatory training described in section 1307g(b)(i) to (xvi).

(i) "Mechanical restraint" means the use of any device, article, garment, or material attached to or adjacent to a pupil's body to perform restraint.

(j) "Physical restraint" means restraint involving direct physical contact.

(k) "Positive behavioral intervention and support" means a framework to assist school personnel in adopting and organizing evidence-based behavioral interventions into an integrated continuum of intensifying supports based on pupil need that unites examination of the function of the problem behavior and the teaching of alternative skill repertoires to enhance academic and social behavior outcomes for all pupils.

(l) "Positive behavioral intervention and support plan" means a pupil-specific support plan composed of individualized, functional behavioral assessment-based intervention strategies, including, as appropriate to the pupil, guidance or instruction for the pupil to use new skills as a replacement for problem behaviors, some rearrangement of the antecedent environment so that problems can be prevented and desirable behaviors can be encouraged, and procedures for monitoring, evaluating, and modifying the plan as necessary.

(m) "Prone restraint" means the restraint of an individual facedown.

(n) "Regularly and continuously work under contract" means that term as defined in section 1230.

(o) "Restraint" means an action that prevents or significantly restricts a pupil's movement. Restraint does not include the brief holding of a pupil in order to calm or comfort, the minimum contact necessary to physically escort a pupil from 1 area to another, the minimum contact necessary to assist a pupil in completing a task or response if the pupil does not resist or resistance is minimal in intensity or duration, or the holding of a pupil for a brief time in order to prevent an impulsive behavior that threatens the pupil's immediate safety, such as running in front of a car. Restraint does not include the administration of medication prescribed by and administered in accordance with the directions of a physician, an adaptive or protective device recommended by a physician or therapist when it is used as recommended, or safety equipment used by the general pupil population

as intended, such as a seat belt or safety harness on school transportation. Restraint does not include necessary actions taken to break up a fight, to stop a physical assault, as defined in section 1310, or to take a weapon from a pupil. Restraint does not include actions that are an integral part of a sporting event, such as a referee pulling football players off of a pile or a similar action.

(p) "Restraint that negatively impacts breathing" means any restraint that inhibits breathing, including floor restraints, facedown position, or any position in which an individual is bent over in such a way that it is difficult to breathe. This includes a seated or kneeling position in which an individual being restrained is bent over at the waist and restraint that involves sitting or lying across an individual's back or stomach.

(q) "School personnel" includes all individuals employed in a public school or assigned to regularly and continuously work under contract or under agreement in a public school, or public school personnel providing service at a nonpublic school.

(r) "Seclusion" means the confinement of a pupil in a room or other space from which the pupil is physically prevented from leaving. Seclusion does not include the general confinement of pupils if that confinement is an integral part of an emergency lockdown drill required under section 19(5) of the fire prevention code, 1941 PA 207, MCL 29.19, or of another emergency security procedure that is necessary to protect the safety of pupils.

**History:** Add. 2016, Act 402, Eff. Mar. 29, 2017

**Popular Name:** Act 451