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September 30, 2016

Zero Tolerance Legislation

This will provide a background regarding one provision of the Bills that were passed out of the Judiciary Committee known as the Zero Tolerance Bills (HB 5618 - 5621 and HB 5693 - 5695). There is a question of the impact of the "rebuttable presumption" language that was added specifically to House Bill No. 5618.

That language says "In exercising this discretion, there shall be a rebuttable presumption that a suspension or expulsion is not justified." The current language further says that although there is a rebuttable presumption against expulsion or suspension, that expulsion or suspension can still occur with consideration of additional factors. Those factors are: (1) student's age (2) disciplinary history (3) any student disability (4) seriousness of the violation (5) whether this threatened other students or staff (6) whether restorative practices will be used and (7) whether a lesser intervention would work.

The definition of rebuttable presumption in the classic law dictionary, Black's Law, is "An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence." The net effect of this provision is that there is an automatic case made, or under Black's Law Dictionary, a prima facie case, that students will not be expelled or suspended. However, if after considering all of the factors found in the legislation, there is still the need for suspension or expulsion, then it will happen.

Rebuttable presumption is similar to a very familiar and basic legal right that you are presumed innocent until proven guilty. Additionally, a rebuttable presumption against expulsion or suspension does not mean that students who are being disciplined always "win" or prevail. What it does mean, however, is that there is a slowing down and the question has to be asked "Is there another way to do this?" It's like there is a "PAUSE" button that gets pressed in the heat of the moment. The schools may end up at the same point and decision, but the pause occurs to consider the future of the student.

On behalf of the Michigan Probate Judges' Association, we recommend that the language remain the same.