

## Recent Student Expulsion Decisions Provide Important Reminders to School Districts

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Practice Area: School Law

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With just a few months left to the school year, we all look to a strong, positive finish to what again has been a challenging year for school districts. While we are hopefully moving past mask and vaccine mandate debates and other COVID-related issues, we still have those last couple of warm months to navigate with restless students who are anxious to finish the school year. History tells us that, while positive preventative measures coupled with good practices in dealing with student behavior go a long way, the number of potential student expulsion situations that occur during this time of year typically spike.

Recent expulsion appeal decisions issued by the Superintendent of Public Instruction (SPI) offer some important reminders for school districts when addressing student behavior through the expulsion process. Historically, through the direction given by the Wisconsin Courts, the SPI recognizes that Section 120.13(1)(c) of the Wisconsin Statutes gives school boards the authority to expel a student when specific substantive standards are met and specific procedures have been followed. *Madison Metro. Sch. Dist. v. Burmaster*, 2006 WI App. 17, ¶ 19, 288 Wis. 2d 771. In reviewing a school board's expulsion decision upon appeal, the SPI must ensure, among other things, that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion. These parameters of the SPI's role on review are well-settled and, as noted by the Wisconsin Supreme Court, "embedded in Wisconsin school law". *Madison Metro. Sch. Dist. v. Wisconsin Dept. of Pub. Instruction*, 199 Wis.2d 1, 17, 543 N.W.2d 843 (1995). In short, assuming a school district follows the statutory requirements, the SPI will generally uphold the school board's expulsion decision.

However, one note of caution is that the hearing record and Orders of Expulsion must have sufficient evidence of the fact(s) giving rise to the consideration of expulsion. In Expulsion Dec. No. 800, a pupil had been expelled for having a paperclip with burnt THC residue in his possession at school. In overturning the expulsion, SPI indicated that the district failed to provide any explanation (evidence) as to how the possession of a trace amount of burnt THC endangers the property, health or safety of others. As a reminder, while the SPI will support a district's finding of endangerment even in cases of trace amounts of THC, the record (and, importantly, the Order) must include some evidence and/or testimony that marijuana possession, use, etc. endangers other students, other individuals, or the specific student who is the subject of the expulsion.

In addition, Notices of Expulsion must give sufficient notice of the incidents to be considered. In Expulsion Dec. 805, a student had been expelled based upon evidence that “[o]n or about May 24, 2021, [the pupil] was in possession of marijuana (THC concentrated pod), a dab pen, two vape pens, and four nicotine concentrated pods while at school and/or under the supervision of school authorities.” On appeal, the student raised various issues. In its Decision, the SPI held to its prior decisions that generally leave the decision to expel to the district and did not accept any of the reasons offered by the student as sufficient to overturn the decision. However, the SPI went on to address an issue not raised on appeal. In doing so, the SPI overturned the expulsion decision, finding that the information quoted above from the Notice of Expulsion did not constitute adequate notice as to the location of the alleged misconduct. This serves as an important reminder that simply stating an incident occurred “at school” will not be found as sufficient to meet the notice requirements under the law. Districts should strive to be as specific as possible when describing the location of the conduct at issue in the Notice of Expulsion.

Hopefully, the remaining months of this challenging school year will be positive. However, in the event consideration of an expulsion proceeding occurs, districts are reminded to adhere to the important procedural and notice requirements set forth by law and of the outcomes that can result if compliance is ignored. Should you have any questions about this *Legal Update*, your district’s obligations under Wisconsin law when proceeding with an expulsion, or for assistance in carrying out or defending expulsion proceedings, please do not hesitate to contact a member of our School Law Section.

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