

# Best Practices: Recent DPI Decisions Suggest Assuring Students and Parents are Not Only Timely “Mailed” But “Receive” Notices for Expulsion

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While, historically, the student expulsion statutes have referenced the requirement that expulsion hearing notices to a student and parent be “sent,” the better practice has been to serve the notice on both the pupil and parent to assure the notice was “received.” Recent decisions of the Wisconsin Superintendent of Public Instruction (SPI), have incorporated a due process requirement beyond the plain language of the expulsion statutes and suggest students and parents must receive actual notice or, in the alternative, a due process violation will occur.

For example, in Decision 783 (2019), the SPI indicated:

Although the statute uses the word “sent,” it is clear that the legislative intent was to ensure that both pupil and parent receive prior notice of the hearing. (Emphasis in original).

The Decision further noted:

The statute’s use of “sent” clarifies the relative timeline—the notice must be sent as opposed to received, at least five days before the hearing—and does not omit the fundamental requirement that the notice be received prior to the hearing. (Emphasis added).

The SPI overturned the District decision to expel the pupil since the pupil and parents indicated they first learned of the expulsion hearing an hour prior to the hearing when the student arrived at school for the school day and was told of the hearing. The mailed notice was returned to the District after the hearing date as undeliverable. One-hour oral notice was not sufficient to satisfy the constitutional concerns even though the Notices were timely “mailed.”

However, a different result occurred in Decision 803 (2021). In this case as well, notices were timely “mailed.” Several attempts to send the notice letter by “certified mail” resulted in the letter being returned to the District.

The facts established that, unlike the prior case, the Principal told the student and parent of the date of the hearing in a meeting before the hearing. A teacher witness had also talked to the parent about the hearing prior to the hearing, which established the family was aware of the hearing. The parent acknowledged knowing of the hearing several days prior to the hearing date. In this case, the SPI determined sufficient notice did exist to satisfy the constitutional notice concerns.

As we head into the 2022-2023 school year, the hope is that no district must expel a student. However, to the degree your district must address an expulsion matter, the SPI's recent decisions strongly suggest your district must take extra precautions when issuing formal Expulsion Notices to make certain both the statutory requirement of "mailing" the Notices and the constitutional requirement of having the Notices "received" are satisfied.

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