



School Law FYI

DPI's Perspective on Important Legal Issues

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At February's meeting of the Wisconsin School Attorney's Association (WSAA), Department of Public Instruction (DPI) representatives shared DPI's perspective on various legal matters. DPI asked the school attorneys in attendance to share this information with their school district clients. Key issues discussed at that meeting are set forth below.

INCREASED EXPULSION SCRUTINY WILL CONTINUE

When reviewing expulsion appeals, the State Superintendent will continue to ensure strict compliance with the procedural requirements of the expulsion statute. This means that, regardless of whether the appeal raises the issue, school districts must provide detailed information about the conduct at issue in the Notice of Expulsion that is sent to students and parents/guardians prior to an expulsion hearing. The Notice should include the date, time, location, and specifics about any conduct, illegal substance used or possessed, or type of weapon involved, etc.

In addition to those legal requirements, DPI representatives explained that the State Superintendent's office disfavored expulsions that do not provide some kind of pathway to a diploma, and they were especially concerned about the increased numbers of expulsions of elementary and middle school students. DPI stated the agency is considering the scope of its power under the statute to "modify" expulsion orders. While the State Superintendent might have this policy objective, the State Superintendent may have limited authority to review expulsion appeals that result in substantive modifications of expulsion decisions issued by school boards. This would certainly be uncharted territory for expulsion appeals.

REPORTING IMMORAL CONDUCT REMAINS A FOCUS

Under specific circumstances set forth in the statute, district administrators are required to report to DPI the “immoral conduct” of district employees licensed by DPI. Immoral conduct includes, among other things, unethical conduct that affects the health, safety, welfare, or education of a student. One circumstance where this reporting is required is when an employee is terminated or non-renewed based in whole or in part on evidence that the employee engaged in immoral conduct. Reporting is also required if an employee resigns, and the district administrator has reasonable suspicion that the resignation is related to immoral conduct. Furthermore, the district administrator has a duty to notify an employee of the district administrator’s duty to report immoral conduct to DPI at the time an employee’s resignation is solicited when the district administrator has reasonable suspicion that the employee engaged in immoral conduct.

DPI stressed the importance (and legal obligation) to comply with these reporting requirements, especially in situations where the employee engages in suspected “grooming behaviors” or “boundary invasions” with students. The statute does not require reporting outside of termination, non-renewal, or resignation, or when licensed individuals are charged with certain crimes or unlicensed employees are convicted of certain crimes. However, DPI has recently taken a broader approach when determining when to investigate and often initiates an investigation when notified of conduct by parents or the media. DPI takes the position it has inherent power under its general licensing authority to engage in a broader investigative role, even when conduct does not fall within the specific confines of the immoral conduct statute. If DPI seeks information from your district about a current or former employee regarding a licensure issue involving alleged immoral conduct outside of the statutory requirements, you should work with legal counsel before responding to DPI’s request as there may be privacy rights of individuals to consider.

PUPIL DISCRIMINATION APPEALS

DPI stressed the importance of districts complying with their own district policies when investigating claims of student discrimination under Wis. Stat. § 118.13 and Wis. Admin. Code PI ch. 9. For example, neither the law nor the regulations require an investigator to commence an investigation within two days of receipt of a complaint. However, a district might have a policy that contains such a requirement. If DPI receives a discrimination appeal from a student in that district, DPI will review whether the district’s investigator commenced the investigation within two days of receipt of the complaint, along with any other requirements established by policy. A failure to comply with a district’s own policy could result in

DPI making a finding of non-compliance, even if DPI ultimately upholds the district's determination that no discrimination occurred. Districts should consider building flexibility into their investigative process.

Additionally, districts do not have the opportunity to augment the record when DPI reviews a discrimination complaint appeal. Therefore, districts should work with legal counsel from the start of the discrimination complaint investigation process to make sure the record is complete, and not wait until an appeal is filed to get counsel involved. At the appeal phase, legal counsel will have limited avenues by which to change what the district has already done or failed to do.

COMPLIANCE WITH SCHOOL DISTRICT CURRICULAR STANDARDS

Wis. Stat. § 121.02(1) and Wis. Admin. Code PI ch. 8 outline a variety of curricular and academic standards that districts must meet. For example, Wis. Stat. § 121.02(1)(h) states, “[Each school board shall] Provide adequate instructional materials, texts and library services which reflect the cultural diversity and pluralistic nature of American society.” DPI interprets this statement to mean that districts must have evidence of providing each requirement: “materials,” “texts,” and “library services.” To DPI, “Library services” means evidence that students have been provided instruction on how to locate and access the materials and texts which reflect the cultural diversity and pluralistic nature of American society.

Members of the public, and organizations such as the ACLU, can file complaints with DPI alleging violations of these standards, and DPI can require districts to come into compliance with these standards to continue to qualify for state aid. Usually, DPI seeks voluntary compliance but will still make preliminary findings of non-compliance. There are standards which have essentially been dormant, but parents and advocates are filing more frequent complaints. Districts might want to consider doing an “audit” of their compliance with these statutory and regulatory curricular and academic standards to ensure these standards are being satisfied.

NEW RECORDS RETENTION SCHEDULE ON THE HORIZON

DPI's current records retention schedule for school districts is likely going to be eliminated in a few months and replaced with a new schedule. DPI's new records retention schedule, if approved by the state Public Records Board, will incorporate by reference other state records retention schedules. School boards which have adopted the current DPI records retention schedule will need to take action to formally adopt the new records retention schedule or adopt their own records retention schedule that is approved by the state Public Records Board. DPI is

planning to provide additional information to school districts before this change takes effect.

REQUESTS TO START THE SCHOOL YEAR PRIOR TO SEPTEMBER 1 MAY BE MORE DIFFICULT TO OBTAIN

DPI has been fairly generous in granting requests by school boards to start the school year prior to September 1 during and in the aftermath of the COVID-19 pandemic. However, DPI cautions that it is going to be much stricter in granting these requests beginning with the 2024 – 2025 school year. These requests will be granted only for extraordinary reasons, and the COVID pandemic and related reasons will likely no longer qualify.

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