



School Law FYI

Expulsion Notices Must Contain Specifics

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Expelling a student is one of the least pleasant tasks for school administrators and school boards. Wisconsin's expulsion statute, Wis. Stat. § 120.13(1)©, gives school boards the authority to expel a student pursuant to specific substantive standards and procedural requirements. The expulsion statute provides seven different grounds upon which a school board may expel a student. These statutory grounds include:

- Repeated refusal or neglect to obey the rules;
- Knowingly conveying any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives;
- Engaging in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others;
- While not at school or while not under the supervision of a school authority engaging in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority;
- While not at school or while not under the supervision of a school authority engaging in conduct which endangered the property, health, or safety of any employee or school board member of the school district in which the student is enrolled;
- Possessing a firearm while at school; and
- If the student is at least 16 years old and has repeatedly engaged in conduct which disrupts the ability of the school authorities to maintain school order or the educational atmosphere.

If the school administration moves forward with an expulsion recommendation, they must follow certain statutory procedures both before and during the hearing. At hearing, the school board must be satisfied that the interest of the school demands the student's expulsion.

One statutory procedural requirement is that the student and family must be provided with a Notice of Expulsion Hearing. The statute provides thirteen different items that must be included within that Notice. This FYI focuses on one critical item that changes from hearing to hearing: the statutory grounds for expulsion and the factual particulars of the alleged conduct. A student and family have a "due process" right to know the particulars of the alleged conduct so that they can prepare for the hearing and defend themselves. If the administration fails to provide sufficient notice, the expulsion decision is subject to reversal on appeal by the State Superintendent of Public Instruction.

The decision to expel a student and the length of expulsion are within the complete discretion of the school board provided the board complies with all statutory procedural requirements. The State Superintendent has held that the school board is in the best position to know and understand what its community requires as a response to school misconduct. Therefore, if a school board typically expels a student for first time possession of drugs on school property, the State Superintendent would likely not overrule that determination absent some extraordinary circumstance.

However, the State Superintendent will scrutinize closely whether the school administration provided sufficient notice to the student of the conduct upon which the expulsion recommendation is based. A series of expulsion appeal decisions from the State Superintendent over the last couple of years have signaled that notice requirements are being given greater scrutiny than they had in the past. Some examples from recent decisions are as follows:

- The expulsion notice stated that a pupil received and consumed two ADD pills from a student with the intent to pay for them later and this was reported to the school principal at 8:30 a.m. on a particular date. The State Superintendent held this was not adequate notice because it did not inform the pupil of the timeframe when the misconduct occurred, where the misconduct occurred, and the description of the misconduct. This notice only alleged when it was reported. The notice did not state the date the student received and consumed the pills. It also was not specific enough with respect to "ADD medication" because there are many types of ADD medication. The State Superintendent added such medication would more accurately be described as ADHD medication but also suggested even that would not have likely been sufficient notice and that the actual name of the medication would be proper.
- The expulsion notice alleged the pupil engaged in expellable conduct by having in their possession illegal drugs and drug paraphernalia on school grounds on a particular

date and alleged they distributed child pornography. The State Superintendent stated this was not specific enough because it was simple generalizations and should be more specific. The State Superintendent found the failure to state the specific time the alleged misconduct occurred, the specific location on school grounds where the alleged misconduct occurred, and the failure to have an adequate description of the conduct to be considered all constituted noncompliance with the requirements of the statute. The State Superintendent suggested that the notice should describe what illegal drug the pupil possessed, what drug paraphernalia the student possessed, and have more details with respect to the child pornography the student distributed, including where the pupil possessed it and how and to whom he distributed it.

- The expulsion notice stated the pupil engaged in expellable conduct by intimidating a witness, assaulting another student, and violating existing pre-expulsion conditions. The State Superintendent found that the notice should have stated the time the alleged misconduct occurred, stated the specific location in the school where the alleged misconduct occurred, and needed to better describe the specific conduct to be considered. The State Superintendent suggested the notice should have described how the pupil intimidated the witness, how the pupil assaulted another student, and what pre-expulsion conditions the pupil violated. In addition, the State Superintendent found the notice did not state clearly whether there were three incidents that would be considered at the hearing or whether the hearing would involve a single incident of witness intimidation, assault, and violation of pre-expulsion conditions.
- The notice of pupil of expulsion stated that on or about a particular date the pupil was in possession of marijuana (THC concentrated pod), a Dab pen, two vape pens, and four nicotine pods while at school and/or under the supervision of school authorities. The State Superintendent found this notice did not constitute adequate notice as to the specific location of the alleged misconduct.
- The expulsion notice stated the pupil engaged in expellable conduct by endangering physical safety/mental well-being on Wednesday [a specific date] at the [name of] High School. The State Superintendent found that the failure to state a specific time the alleged misconduct occurred, the specific location in the school where the alleged misconduct occurred, and a failure to have a more detailed description of the conduct engaged in failed to meet the statutory requirements.
- The notice of pupil expulsion stated that a pupil engaged in posting snapchats while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The State Superintendent found that the pupil was not at school when she engaged in these social media posts, and, therefore, because

the district cited the wrong statutory basis in this notice and findings, the student could not be expelled for that conduct.

Take-Aways From These Expulsion Appeals

These recent decisions confirm that an expulsion notice must include a detailed and robust description of the conduct which forms the basis for the expulsion recommendation. Merely listing the date of the alleged conduct will likely no longer be adequate. Administration should be advised to include a specific time (or at least an approximate time) of each alleged incident.

Likewise, merely claiming a student possessed drugs at the high school is likely not sufficient. Administration should include a description of the specific location, such as the girls' bathroom, a room number, or a particular hallway.

Finally, with respect to possession of drugs, administration should include a specific description of the exact type of drugs or drug paraphernalia (e.g., marijuana pipe, THC DAB pen, THC vape pod, grinder, etc.) in the expulsion notice.

Conclusion

As the procedural requirements for expulsion are usually the only basis upon which the State Superintendent reverses expulsion orders, school administration should be sure to put sufficient detail in an expulsion notice so there is no question that the student and the family were put on notice of the conduct alleged. In many of these recent cases where the State Superintendent reversed the expulsion decision, the family did not raise the issue of inadequate notice on appeal. Rather, the State Superintendent's expulsion review process found that inadequacy on the agency's own volition. Likewise, in some of these cases the student had admitted to the conduct alleged, yet the admission was not found sufficient to override the procedural defect in the expulsion notice.

If you have questions about your expulsion notices or other expulsion related issues, please feel free to reach out to a member of the Boardman Clark School Law Practice Group.

More information about expulsions and related student discipline issues will be presented at the Boardman Clark School Law Seminar.

Boardman Clark School Law Seminar

We will be holding our Annual School Law Seminar on November 17, 2022, at the Alliant Energy Center in Madison, from 8:30 a.m. to 3:00 p.m.

This program is designed specifically for the benefit of school administrative personnel and board members. This year's complimentary program will include a timely panel

discussion with Boardman Clark school law attorneys on cases impacting the current school law landscape. Registration is now open at boardmanclark.com/school.

We hope to see you there.

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