

WISCONSIN EXPULSION DIGEST

by

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PREFACE

Most people become school board members because they wish to add to the educational process. Few wish to lessen it or lessen the number of people who are benefited by it.

Perhaps it is for this reason that school board members find attendance at an expulsion hearing to be one of their least pleasant duties. It is a rare student who, in spite of his or her transgression(s), would not be better served by remaining in school. To deprive a student of an education, even for a short time, contradicts the very reason for the existence of a school.

Nevertheless, school board members are periodically called to a meeting at which they must determine whether a student should lose the opportunity for an education. Administrative staff members are present at the meeting and, contrary to their normal stance, suggest that a student should not be educated -- that someone should be taken from the educational process.

The decision almost invariably amounts to a balancing of two needs: (a) the need of a student for a continuing educational process, and (b) the need for a safe and productive learning environment for the other students in his or her class.

The school board member realizes that he or she has left the role of "legislator." Instead, he or she has become a juror. The school board member-juror next realizes that he or she will also be a judge. After all, the hearing must be a fair one and the interests of both the student and the district must be properly protected.

What rules must be followed? What is fair to both student and administration? What is due process? Must the board follow court rules of evidence and court procedure? What options are available to the board if the student's conduct warrants action?

Whatever the decisions, no one is happy about the result. Has the board expelled a student that should not have been expelled? Has the board refused to expel a student that will so disrupt the educational process as to disallow others from learning?

Prior to 1980, an additional problem existed. The student could appeal and the Superintendent of Public Instruction could and did overturn expulsions (reinstate students). The reasons for doing so were seemingly limitless.

In March of 1980, the school board of the Racine Unified School District expelled V. O. (student). It did so having found that V. O. had stolen a ring belonging to another student. The procedural mandates of Section 120.13(1)(c), Stats., were followed by the Racine School Board. The Board's finding, however, was made in part on the basis of hearsay testimony offered by school staff members.

The student appealed to then Superintendent of Public Instruction, Barbara Thompson. Superintendent Thompson reversed the decision of the board and reinstated the student. She did so because she felt the board could not rely on hearsay evidence in an expulsion hearing. In making her decision, she imposed courtroom-like evidentiary standards on local school boards holding expulsion hearings.

The Racine School Board appealed the decision of Superintendent Thompson to the Circuit Court for Racine County. Circuit Judge James Wilbershede reversed the decision of the Superintendent holding her hearsay ruling to be erroneous. Judge Wilbershede ruled that hearsay evidence could be admitted because he felt the School Board could not compel the attendance of witnesses.

Superintendent Thompson appealed the decision to the Court of Appeals (Second District). In Racine Unified School Dist. v. Thompson, 106 Wis. 2d 657, 321 N.W.2d 334 (Ct. App. 1982), the Court of Appeals affirmed the Circuit Court. The Court of Appeals decided that hearsay evidence is admissible in expulsion hearings. The Court of Appeals also found that school boards do, in fact, have subpoena power for expulsion hearings.

More importantly, the Court of Appeals stated (page 667):

While our decision here is founded solely upon an error of law of the state superintendent, we point out, obiter dicta, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13(1)(c), Stats. The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of sub. (c) concerning notice, right to counsel, etc.

Herbert J. Grover became State Superintendent of Public Instruction in 1982. In his very first review of an expulsion, Superintendent Grover quoted this language of the Court of Appeals. The same language has been quoted or paraphrased in virtually every other decision of Superintendent Grover and his successors.

In 1994, the Wisconsin Court of Appeals again discussed expulsion appeals and affirmed its decision in Racine Unified School District v. Thompson, supra. In Madison Metropolitan School District v. Wisconsin Department of Public Instruction, Lee Sherman Dreyfus, interim State Superintendent of Public Instruction, 199 Wis. 2d 1, 543 N.W.2d 843 (1994), the Court of Appeals affirmed its earlier decision to limit the superintendent's review of a board's expulsion to the procedural mandates of the expulsion statute.

The two cases have had a dramatic effect, therefore, on the decisions of the Superintendent of Public Instruction with respect to expulsion appeals. Dr. Grover and subsequent superintendents repeatedly have stated that the power of the Superintendent is limited to a review of the procedural mandates of the expulsion statute.

The result has been a significant broadening of the discretion and authority of local school boards in expulsion proceedings. The Superintendent of Public Instruction will only reinstate students when school boards have failed to follow the procedural mandates of the statute.

As of September 15, 2010, Superintendent Grover and his successors have reviewed 669 appeals from school board expulsions. In most cases, the superintendents have upheld the school board. Where school boards have failed to follow the statutory mandates of Section 120.13(1)(c), however, the superintendents have reinstated the student.

Their decisions contain interpretations with respect to Section 120.13(1)(c), Stats. Their decisions provide guidance to school boards involved in expulsion proceedings. For example, they have interpreted the notice provisions of Section 120.13(1)(c) thereby determining what five days' notice actually means. They have described that information which should appear in an order for expulsion. They have determined what happens when required information is not present.

This publication is intended to index the various decisions of the superintendents with respect to expulsion proceedings in Wisconsin.

It does little more. A board member, administrator, or school attorney who wishes to know whether the superintendents have made a decision on a particular issue may look to this publication for the answer. If the superintendents have made such a decision, the decision will be indexed. If the superintendents have not decided the issue, the information will not be available in this publication. Copies of the actual decisions are available through the Department of Public Instruction.

No attempt is made to set forth or analyze all of the state and federal court decisions that have discussed due process requirements in expulsion proceedings. For a complete and excellent discussion of due process requirements and the various state and federal court decisions involving these requirements, please see The Law of Student Expulsions And Suspensions, Monograph (1999 Second Edition). This publication is available through the Education Law Association, 300 College Park, Dayton, Ohio, 45469-2280.

It is no doubt hoped by board members, staff members and school attorneys that the decisions of the Superintendent of Public Instruction will become a "body of law" which will be followed by future superintendents unless changed by the legislature or the courts. In this way, school boards will be guided by the decisions of the Superintendent and will be able to act properly as expulsion proceedings are held.

Surely the superintendents should be thanked for their close attention to the statutory interpretation made by the Court of Appeals. Their decisions leave a large measure of discretion and, therefore, responsibility to local school boards.

-- Gilbert J. Berthelsen

HOW TO USE THIS PUBLICATION

This publication digests and indexes every expulsion decision made by Superintendents of Instruction Herbert Grover, John Benson, Elizabeth Burmaster, and Anthony S. Evers. The first decision referenced is In re the Expulsion of Suring School District of William S., Decision and Order No. 98 (State Superintendent of Pub. Instr. June 17, 1982.) The last decision referenced is In re the Expulsion of D. R. by the Flambeau School Dist., Decision and Order No. 669 (State Superintendent of Pub. Instr. September 15, 2010).

Section I through Section XVI of this publication provide an index to these decisions based on the legal principle or statutory interpretation involved.

A table of contents is provided to the index. The index is organized in a chronological fashion. In Section I, the authority of and limitations on a school board are discussed. Since suspensions usually occur before expulsions, suspensions are discussed in Section II. Pre-hearing procedures (including notice) are discussed in Section III.

Ordinarily, hearings are held following suspension and prehearing procedures (including notice). Hearings are therefore discussed in Section IV. Should the school board wish to expel, it must do so under certain specified circumstances. "Conduct warranting expulsion" is set forth in Section V.

Following a hearing, an order of expulsion must be sent. The order of expulsion is discussed in Section VI. Appeal to the Superintendent of Public Instruction is discussed in Section X.

Because students having an exceptional educational need are treated so differently by state statutes and by federal law, a separate section is set forth to discuss these issues. It is Section XII.

Indices follow. First an index to decisions based on subject matter is provided. Should the reader wish to find all decisions involving marijuana, he or she would look to "marijuana" in the INDEX TO DECISIONS BY SUBJECT MATTER. The index is paginated S-1 through S-33.

Should the reader remember a particular decision by the name of the school district involved, he or she would find the decision number by looking to INDEX TO DECISIONS BY SCHOOL DISTRICT which follows. This index is paginated D1 through D-25.

Using the decision number and the following index, CHRONOLOGICAL LIST OF DECISIONS, he or she would find the complete citation to that decision.

This index is paginated C-1 through C-37. Further, the decision number is provided in the last section.

When the Superintendent has cited past decisions, he has done so in the following forms:

In re Expulsion of Anthony Clark K. by the Amery School Dist., Decision and Order No. 153 (State Superintendent of Public Instr. Aug. 19, 1987)

or

Anthony Clark K. by the Amery School Dist., Decision and Order No. 153 (8/19/87).

For purposes of brevity in this publication, citations are made as follows:

Anthony Clark K. by the Amery School Dist., (153) August 19, 1987.

Where more than two decisions stand for the same principle, subsequent decisions are cited simply by their number, e.g. 271, 281, etc.

This publication is designed to provide general information regarding expulsions in Wisconsin. The publication is not intended to be and should not be relied upon as legal advice. If legal advice is required, the services of competent legal counsel should be obtained.

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I. Authority to Expel

A. Expulsion Defined

The ordinary and accepted meaning of "expulsion" is that the student is not permitted to attend school at all for a specified period of time.

Jay S. by the Plymouth School Dist., (154) Aug. 25, 1987 (p.4)

Anthony Clark K. by the Amery School Dist., (155) Sept. 2, 1987 (p. 4)

A school board's imposition of probationary status on a student which places certain restrictions on his out-of-class activities does not constitute an expulsion, de facto or otherwise.

Jay S. by the Plymouth School Dist., (154) Aug. 25, 1987 (p. 4)

Anthony Clark K. by the Amery School Dist., (155) Sept. 2, 1987 (p. 4)

Sec. 120.13(1)(c), Stats., is an exception to the constitutional (Wis.) guarantee of a public education, and provides the procedures necessary to ensure due process in withdrawing this constitutional right because of a student's misconduct.

Susan Marie H. by the Kenosha Unified School Dist., (157) June 28, 1988 (p. 9)

By enacting sections 120.13(1)(b) and (c), Stats., the legislature has recognized certain situations in which a child may be excluded from enjoying the right to a public education otherwise guaranteed by the Wisconsin Constitution.

Ricardo S. by the School Dist. of Wisconsin Rapids, (145) Sept. 5, 1986 (p. 7)

Susan Marie H. by the Kenosha Unified School Dist., (157) June 28, 1988 (p. 9)

The state superintendent's jurisdiction for review only covers the expulsion proceedings, which commence with the expulsion hearing notice.

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Athena S. by the School Dist. of Omro, (431)
April 17, 2001 (p. 3)

B. Statutory Authority to Expel - Section 120.13(1)(a)(b) and (c), Stats. (1995-96)

Section 120.13(1)(a) through (g), Stats. (1997-98) states as follows:

120.13 School board powers. The school board of a common or union high school district may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils, and including all of the following:

(1) SCHOOL GOVERNMENT RULES; SUSPENSION; EXPULSION.

(a) Make rules for the organization, graduation and government of the schools of the school district, including rules pertaining to conduct and dress of pupils in order to maintain good decorum and a favorable academic atmosphere, which shall take effect when approved by a majority of the school board and filed with the school district clerk. Subject to 20 USC 1415(k), the school board shall adopt a code to govern pupils' classroom conduct beginning in the 1999-2000 school year. The code shall be developed in consultation with a committee of school district residents that consists of parents, pupils, members of the school board, school administrators, teachers, pupil services professionals and other residents of the school district who are appointed to the committee by the school board. The code of classroom conduct may provide different standards of conduct for different schools and may provide additional placement options under s. 118.164(3). The code shall include all of the following:

1. A specification of what constitutes dangerous, disruptive or unruly behavior or behavior that

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interferes with the ability of the teacher to teach effectively under s. 118.164(2).

2. Any grounds in addition to those under subd.

1. for the removal of a pupil from the class under s. 118.164(2).

3. The procedures for determining the appropriate educational placement of a pupil who has been removed from the class and assigned a placement by the school principal or his or her designee under s. 118.164.

4. A procedure for notifying the parent or guardian of a minor pupil who has been removed from the class under s. 118.164(2).

(b) The school district administrator or any principal or teacher designated by the school district administrator also may make rules, with the consent of the school board, and may suspend a pupil for not more than 5 school days or, if a notice of expulsion hearing has been sent under par. (c)4 or (e)4 or s. 119.25(2)(c), for not more than a total of 15 consecutive school days for non-compliance with such rules or school board rules, or for 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, or for conduct by the pupil while at school or while under the supervision of a school authority which endangers the property, health or safety of others, or for conduct while not at school or while not under the supervision of a school authority which endangers the property, health or safety of others at school or under the supervision of a school authority or endangers the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled. In this paragraph, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property. Prior to any suspension, the pupil shall be advised of the reason for the proposed suspension. The pupil may be suspended if it is

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determined that the pupil is guilty of noncompliance with such rule, or of the conduct charged, and that the pupil's suspension is reasonably justified. The parent or guardian of a suspended minor pupil shall be given prompt notice of the suspension and the reason for the suspension. The suspended pupil or the pupil's parent or guardian may, within 5 school days following the commencement of the suspension, have a conference with the school district administrator or his or her designee who shall be someone other than a principal, administrator or teacher in the suspended pupil's school. If the school district administrator or his or her designee finds that the pupil was suspended unfairly or unjustly, or that the suspension was inappropriate, given the nature of the alleged offense, or that the pupil suffered undue consequences, or penalties as a result of the suspension, reference to the suspension on the pupil's school record shall be expunged. Such finding shall be made within 15 days of the conference. A pupil suspended under this paragraph shall not be denied the opportunity to take any quarterly, semester or grading period examinations or to complete course work missed during the suspension period, as provided in the attendance policy established under s. 118.16(4)(a).

(bm) The school district administrator or any principal or teacher designated by the school district administrator shall suspend a pupil under par. (b) if the school district administrator, principal or teacher determines that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 USC 921 (a)(3).

(c) 1. The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information

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concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion. In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

2. In addition to the grounds for expulsion under subd. 1., the school board may expel from school a pupil who is at least 16 years old if the school board finds that the pupil repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not constitute grounds for expulsion under subd. 1, and is satisfied that the interest of the school demands the pupil's expulsion.

2m. The school board shall commence proceedings under subd. 3. and expel a pupil from school for not less than one year whenever it finds that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 USC 921 (a)(3). Annually, the school board shall report to the department the information specified under 20 USC 8921 (d) (1) and (2).

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3. Prior to expelling a pupil, the school board shall hold a hearing. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel. The hearing officer or panel shall keep a full record of the hearing. The hearing officer or panel shall inform each party of the right to a complete record of the proceeding. Upon the request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian. Upon the ordering by the hearing officer or panel of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located.

4. Not less than 5 days written notice of the hearing under subd. 3 shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

a. The specific grounds, under subd. 1., 2., or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.

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- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.
- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
- f. That the school board shall keep written minutes of the hearing.
- g. That if the school board orders the expulsion of a pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
- i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
- j. That the decision of the school board shall be enforced while the department reviews the school board's decision.
- k. That an appeal from the decision of the department may be taken within 30 days to the circuit court of the county in which the school is located.

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L. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13 (1).

(d) No pupil enrolled in a school district operating under ch. 119 may be suspended or expelled from school for truancy.

(e) 1. The school board may adopt a resolution, which is effective only during the school year in which it is adopted, authorizing any of the following to determine pupil expulsion from school under subd. 2. instead of using the procedure under par. (c) 3.:

a. An independent hearing panel appointed by the school board.

b. An independent hearing officer appointed by the school board.

2. During any school year in which a resolution adopted under subd. 1 is effective, the independent hearing officer or independent hearing panel appointed by the school board:

a. May expel a pupil from school whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c) 1. or 2.

b. Shall commence proceedings under subd. 3. and expel a pupil from school for not less than one year whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c) 2m.

3. Prior to expelling a pupil, the hearing officer or panel shall hold a hearing. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian, may be represented at the hearing by counsel. The

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hearing officer or panel shall keep a full record of the hearing. The hearing officer or panel shall inform each party of the right to a complete record of the proceeding. Upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian. Upon the ordering by the hearing officer or panel of the expulsion of a pupil, the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, the pupil's parent or guardian. Within 30 days after the date on which the order is issued, the school board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the hearing officer or panel shall be enforced while the school board reviews the order. The expelled pupil and, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located. This paragraph does not apply to a school district operating under ch. 119.

4. Not less than 5 days written notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

a. The specific grounds, under par. (c) 1., 2. or 2m. and the particulars of the pupil's alleged

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conduct upon which the expulsion proceeding is based.

- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.
- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
- f. That the hearing officer or panel shall keep a full record of the hearing and, upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- g. That if the hearing officer or panel orders the expulsion of a pupil the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- h. That within 30 days of the issuance of an expulsion order the school board shall review the order and shall, upon review, approve, reverse or modify the order.
- i. That, if the pupil is expelled by the hearing officer or panel, the order of the hearing officer or panel shall be enforced while the school board reviews the order.
- j. That, if the pupil's expulsion is approved by the school board, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian

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may appeal the school board's decision to the department.

k. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.

L. That the decision of the school board shall be enforced while the department reviews the school board's decision.

m. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.

n. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13(1).

(f) No school board is required to enroll a pupil during the term of his or her expulsion from another school district. Notwithstanding s. 118.125(2) and (4), if a pupil who has been expelled from one school district seeks to enroll in another school district during the term of his or her expulsion, upon request the school board of the former school district shall provide the school board of the latter school district with a copy of the expulsion findings and order, a written explanation of the reasons why the pupil was expelled and the length of the term of the expulsion.

(g) The school board may modify the requirement under pars. (c) 2m. and (e) 2. b. on a case-by-case basis.

NOTE: This principle is set forth in almost all decisions of the superintendent.

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The legislature has conferred upon school boards the power to expel students by sec. 120.13(1)(c) and sec. 119.25(a), Stats. In addition to specifying several alternative grounds for expulsion, that statute goes on to expressly afford students charged with expellable offenses certain due process rights including notice of hearing, entitlement to counsel, the option to close the hearing to the public, the preservation of a record of the proceedings, written notification of the expulsion order and the right to appeal the board's expulsion decision to the State Superintendent of Public Instruction.

David G. by the Westosha School Dist., (109)
Feb. 25, 1983 (p. 2)

See also decisions numbered 111, 112, 113,
114, 115, 116 and 117.

The procedural requirements set out in sec. 120.13(1)(c), Stats., are independent of the case law discussions of due process, and may well exceed the protections required by a constitutional due process analysis.

Michael S. by the Milwaukee Pub. School Bd.,
(128) May 10, 1985

The applicable statutes setting forth school board powers are sec. 120.13(1) and sec. 119.25(a), Stats. Section 120.13(1)(c) authorizes a school board to expel students, and sets forth the procedural standards which the school board must follow: (1) The student is entitled to notice of a hearing; (2) The student is entitled to counsel at the hearing; (3) The hearing may be closed at the student's request; (4) The board must keep written minutes of the meeting; (5) If expulsion is ordered, such order shall be mailed to the student; and (6) An expelled student may appeal the expulsion to the SPI.

Teresa Lynn by the Janesville School Dist.,
(120) June 1, 1984 (p. 4)

See also decisions numbered 129, 133, 134
and 137.

Chapter PI 1

COMPLAINT RESOLUTION AND APPEALS

PI 1.01	Purpose and applicability.	PI 1.06	Mediation.
PI 1.02	Definitions.	PI 1.07	Hearings.
PI 1.03	Receipt and filing of complaints and appeals.	PI 1.08	Decision.
PI 1.04	Procedures.	PI 1.09	Withdrawal, failure to prosecute.
PI 1.05	Investigations.	PI 1.10	Rights to further review.

Note: Chapter PI 1 as it existed on December 31, 1987, was repealed and a new chapter PI 1 was created effective January 1, 1988.

PI 1.01 Purpose and applicability. (1) **PURPOSE.** The purpose of this chapter is to provide the state superintendent with a system for dealing with complaints and appeals received by the department; to promote coordination with other appropriate units of government and agencies regarding complaints and appeals; and to promote the voluntary resolution of problems at the level closest to their source.

(2) **APPLICABILITY.** This chapter applies to all complaints received by the department, and to all appeals authorized by statute which are filed with the department, except that this chapter does not apply to appeals or complaints subject to other, more specific, statutes or rules, including, but not limited to, the following:

(a) Appeals relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education of a child who has an exceptional educational need, which shall be resolved under 20 USC 1415 of the Education of the Handicapped Act and subch. V of ch. 115, Stats.

(b) Appeals of a departmental decision that a teacher education program is not in compliance with ch. PI 34, which shall be resolved through the procedures under s. PI 34.07.

(c) Complaints that the state or a subgrantee is violating subch. II of the Education of the Handicapped Act, 20 USC 1411-1418 and 1420, which shall be resolved through the procedures under the Education Department General Administrative Regulations at 34 CFR Parts 76 and 77, commonly referred to as EDGAR.

(d) Complaints, hearings and appeals related to license revocation and reinstatement under s. 118.19 (5), Stats., and s. PI 34.35, which shall be resolved through the procedures specified in s. PI 34.35.

(e) School district boundary appeal board hearings, which shall be conducted under s. 117.03, Stats.

(f) Appeals relating to the granting of high school credit and number of high school credits to be awarded to a pupil participating in the postsecondary enrollment options program under ch. PI 40, which shall be resolved through the procedures under s. PI 40.08.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88; cr. (2) (f), Register, October, 1992, No. 442, eff. 11-1-92; corrections in (2) (d) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522; corrections in (2) (b) and (d) made under s. 13.93 (2m) (b) 7., Stats., Register October 2001 No. 550; correction in (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register June 2004 No. 582.

PI 1.02 Definitions. In this chapter:

(1) "Appeal" means an application to the state superintendent, as provided by statute or rule, to review a decision by a local education agency.

(2) "Complaint" means an allegation of wrongdoing filed with the state superintendent against a local education agency, its officers or employees stating essential facts and demanding relief.

(3) "Department" means the Wisconsin department of public instruction.

(4) "Local education agency" means school boards, school districts, cooperative educational service agencies, county handicapped childrens' education boards, public libraries, public library systems, and private schools or agencies if the private schools' or agencies' actions or decisions concern programs receiving state or federal funds which are administered by the department.

(5) "Party" means the complainant or appellant and the local education agency named in the complaint or appeal.

(6) "Rule" means any rule in the Wisconsin Administrative Code or regulation in the Code of Federal Regulations.

(7) "State superintendent" means the state superintendent of public instruction.

(8) "Statute" means any Wisconsin or United States statute.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.03 Receipt and filing of complaints and appeals.

(1) All complaints and appeals shall be filed in writing specifying the grounds upon which the action is brought, the facts, and any relief sought. Complaints and appeals shall be signed by the complainant or appellant or the representative of the complainant or appellant. If the complainant or appellant is a minor, the complaint or appeal shall also be signed by his or her parent or guardian, unless the statute or rule under which the complaint or appeal is filed prohibits this requirement.

(2) If the complaint or appeal is filed by the representative under sub. (1), the representative shall file a notice of representation which shall include written consent of the complainant or appellant and the parent or guardian if required in sub. (1).

(3) Failure of the complainant or appellant to file a complaint or appeal within the time period specified in the statute or rule under which the complaint or appeal is filed deprives the state superintendent of jurisdiction in the matter.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.04 Procedures. Upon receipt of a written complaint or appeal filed under s. PI 1.03, the state superintendent shall acknowledge receipt of the complaint or appeal in writing and shall use any or all of the following procedures which he or she determines to be appropriate:

(1) Provide technical assistance and information and attempt to resolve the matter informally.

(2) Refer the complainant to another state agency for action or resolution.

(3) Conduct an investigation under s. PI 1.05.

- (4) Conduct a hearing under s. PI 1.07.
- (5) Issue a decision based on a review of the record of a hearing held before the local education agency.
- (6) Issue protective orders or grant temporary relief as deemed necessary by the state superintendent to preserve the rights of any party prior to the issuance of a final decision or order.
- (7) Arrange for mediation under s. PI 1.06.
- (8) Direct the complainant to exhaust any administrative remedies available before the local education agency.
- (9) Determine that the state superintendent does not have jurisdiction in the matter.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.05 Investigations. (1) If the state superintendent determines under s. PI 1.04 (3) to conduct an investigation, the investigation may include an on-site review or any other activity which the state superintendent deems appropriate.

(2) The state superintendent may determine whether reasonable grounds exist for believing that the matter asserted by the complainant or appellant is probably true, and may issue a finding to that effect.

(3) During the investigation, the state superintendent may keep the identity of the complainant in confidence if, in the state superintendents' judgment, disclosure of the complainant's identity would be likely to subject the complainant to retaliatory action or would otherwise jeopardize the investigation.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.06 Mediation. (1) Prior to holding a hearing regarding a complaint or an appeal, the state superintendent may attempt to resolve the matter through mediation if the parties agree. The state superintendent shall appoint the mediator. If the parties agree to a negotiated settlement, the mediator shall notify the state superintendent of the terms of the settlement and the state superintendent shall find that the matter is resolved. If the parties are unable to agree to a negotiated settlement, the state superintendent shall determine which other procedures under s. PI 1.04 to follow.

(2) The mediation sessions shall be conducted at the discretion of the mediator, except that if a negotiated settlement has not been reached within 90 days after the mediator received the complaint or appeal, the mediator shall either request an extension of time or inform the state superintendent that the mediation effort is unsuccessful.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.07 Hearings. (1) **WHEN HELD.** The state superintendent shall conduct a hearing when required by the statute or rule under which the complaint or appeal is filed or when required under s. 227.42, Stats. The state superintendent may conduct a hearing in other matters if he or she deems it is appropriate.

(2) **NOTICE.** Except in case of emergency, as determined by the state superintendent, at least 10 days prior to the hearing the state superintendent shall mail to the parties, by certified mail, written notice of hearing stating the time, date and place of the hearing, the nature of the case, a general statement of the issues to be heard and the procedures to be followed. The parties may by mutual consent waive the right to notice. The state superintendent may postpone the hearing in the case of exceptional circumstances.

(3) **HEARING EXAMINER.** The state superintendent shall preside over the hearing or appoint a hearing examiner. The state

superintendent may not appoint any person as hearing examiner who has been involved, either directly or indirectly, with the action or decision which is the subject of the complaint or appeal.

(4) **CONDUCT OF HEARING.** (a) If the state superintendent determines that the matter is a contested case under s. 227.01 (3), Stats., the hearing shall be conducted under procedures specified in subch. III of ch. 227, Stats., and this chapter.

(b) The hearing examiner shall have the powers specified in s. 227.46, Stats., regardless of whether the matter is being treated as a contested case under ch. 227, Stats.

(c) If the local education agency fails to appear at the hearing, the hearing examiner may proceed with the hearing.

(5) **HEARING RECORD AND TRANSCRIPTS.** The department shall ensure that a stenographic or electronic record of oral proceedings is made when required under ch. 227, Stats. The department shall transcribe the hearing record at the request of either party if the transcript is needed for an appeal of the decision of the state superintendent or hearing examiner. The department shall charge a reasonable fee for transcribing the hearing record unless the state superintendent determines that the party is unable to pay.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.08 Decision. Following the hearing of a contested case under ch. 227, Stats., and when otherwise required by statute or rule, the decision of the state superintendent or hearing examiner shall be in writing stating separate findings of fact and conclusions of law. The decision may order remedies which the state superintendent or hearing examiner determines appropriate, and may or may not include the relief sought by the complainant or appellant. Decisions shall be served on all parties by mailing a copy to each party's last known address by certified mail along with a notice of any right to further review as may be provided by the statute or rule under which the complaint is filed or ss. 227.52 to 227.57, Stats.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.09 Withdrawal, failure to prosecute. (1) **WITHDRAWAL.** At any time prior to the issuance of a final decision, the complainant or appellant may withdraw the complaint or appeal in writing. Upon receiving such a request, the state superintendent shall issue an order dismissing the matter without prejudice.

(2) **FAILURE TO PROSECUTE.** The state superintendent may dismiss any complaint or appeal if:

(a) The complainant or appellant fails to respond within 20 days to correspondence, sent by certified mail to his or her last known address, from or on behalf of the state superintendent concerning the complaint or appeal, or

(b) The complainant or appellant fails to appear at the hearing.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

PI 1.10 Rights to further review. (1) Upon the request of either party, the state superintendent may reopen a complaint or appeal which was resolved informally or through mediation. If the state superintendent reopens the complaint or appeal, he or she shall determine which procedures under s. PI 1.04 to follow.

(2) Final decisions issued by the state superintendent shall specify any rights the parties may have to judicial review under ch. 227, Stats., or other statute or rule.

History: Cr. Register, December, 1987, No. 384, eff. 1-1-88.

DPI POLICY STATEMENT

Department staff has created this checklist as a reference for school boards involved in expulsion proceedings. In considering the procedures required in an expulsion, it is useful to review their basis. Each child in Wisconsin has a constitutional right to an education. No one may be deprived of a constitutional right without due process of law. That means that certain procedures must be used which are intended to ensure a basic fairness to the process.

The Wisconsin legislature has codified the basic procedural steps that must be followed in expulsions at sec. 120.13(1)(c), Wis. Stats. This checklist itemizes those steps and was put together to assist you in complying with the statutory requirements.

In addition to codifying the procedural requirements for expulsions, sec. 120.13(1)(c), Wis. Stats., sets out the state superintendent's role. The state superintendent must review the record of an expulsion and issue a decision within 60 days of receipt of an appeal. Failure to comply with all of the statutory requirements has been the most common reason for the reversal of a school district's expulsion decision by the state superintendent on appeal. Most, if not all, of the reversals during the last school year could have been avoided had the school district carefully followed the enclosed checklist.

Because the child's right to an education is constitutional, it is conceivable that defects in the expulsion process may arise despite faithful compliance with the enclosed checklist. Nonetheless, the checklist should prove to be an invaluable tool for the districts and will greatly increase the probability that a board's decision will be upheld.

If you would like further guidance in the expulsion area there is now a published digest that you may want to review. The Wisconsin School Attorneys Association, Inc., has recently published the Wisconsin Expulsion Digest which contains and indexes all of the state superintendent's expulsion appeal decisions issued since June of 1982. It is available from the Wisconsin Association of School Boards at 122 W. Washington Avenue, Suite 500, Madison, WI 53703 at a cost of \$40.00 per copy.

(Wis. Stats. § 120.13(1)(c))

- 1. Not less than five days prior to the date of the expulsion hearing, the school board shall send written notice of the hearing, separately:

- _____ a. to the pupil, AND
- _____ b. if the pupil is a minor, to the parent/guardian.

- 2. The Notice of Hearing shall state:

- _____ a. the specific statutory grounds (see 3 a –g below) and the particulars of the alleged conduct upon which the expulsion is based;
- _____ b. the time and place of the hearing;
- _____ c. that the hearing may result in the pupil’s expulsion, including the maximum length of expulsion;
- _____ d. that upon request of the pupil or the parent/guardian of the minor pupil, the hearing shall be closed;
- _____ e. that the pupil and, if the pupil is a minor, the parent/guardian, may be represented by counsel at the hearing;
- _____ f. that prior to expulsion, the school board shall conduct hearing and keep written minutes of the hearing;
- _____ g. that if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the parent/guardian;
- _____ h. that if the pupil is expelled by the school board, the expelled pupil—or if the expelled pupil is a minor, his/er parent/guardian—may appeal the school board’s decision to the department;
- _____ i. That if the school board’s decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision;
- _____ j. that the decision of the school board shall be enforced while the department reviews the school board’s decision;
- _____ k. that an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located;
- _____ l. that the state statutes related to pupil expulsion are §§ 119.25 and 120.13(1).

- 3. Expellable offenses—based on facts presented at the hearing, which prove the conduct alleged in the Notice of Hearing, the school board makes written findings that:

- _____ a. the pupil is guilty of repeated refusal or neglect to obey the rules, OR
- _____ b. the pupil knowingly conveyed or caused to be conveyed 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, OR
- _____ c. the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others,* OR
- _____ d. the pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority,* OR
- _____ e. the pupil endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled,* OR
- _____ f. the pupil is at least 16 and repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of the school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not constitute grounds for expulsion under 3a – 3e above, OR
- _____ g. the school board shall commence an expulsion proceeding and expel a pupil from school for not less than one year whenever it finds that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 USC 921(a) (3). This requirement may be modified by the board on a case by case basis. (§ 120.13(l)(g), Wis. Stats.)
- _____ h. AND the board is satisfied that the interest of the school demands the pupil’s expulsion.
* “endanger” includes making a threat to the health or safety of a person or a threat to damage property.

- 4. The school board shall mail a copy of the expulsion order, separately:

- _____ a. to the pupil, AND
- _____ b. if the pupil is a minor, to the pupil’s parent/guardian.

- 5. The expulsion should include the right to appeal to the State Superintendent.

(District Letterhead)

_____, 20____

(Student)
(Address)

Send/Mail
Separately to pupil
and to parent guardian

(Parent/guardian)
(Address)

Re: Notice of Expulsion Hearing

Dear _____:

This letter is to advise you that (pupil's name) has been referred to the School Board of the _____ School District for expulsion proceedings pursuant to Section 120.13(1)(c) of the Wisconsin Statutes. A hearing has been scheduled before the School Board for _____, 20____, at _____(am)(pm) in the _____ Room of the _____ Building located at _____. This hearing may result in (pupil's name) expulsion from the schools of the _____ School District, which may extend at a maximum to (his/her) 21st birthday.

Upon the pupil's request, and if the pupil is a minor, upon request of his/her parent(s) or guardian(s), the hearing shall be closed. The School Board shall keep written minutes of the hearing.

The expulsion proceeding is based upon (pupil's name) alleged acts which include (insert or attach alleged misconduct -- be specific -- misconduct, date, time, location):

_____.

The School Administration believes proof of the above misconduct supports a finding that (pupil's name) (check or include appropriate ground(s).

is guilty of REPEATED refusal or neglect to obey the rules;

knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives;

engaged 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, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority;

engaged in conduct which endangered the property, health or safety of an employee or a school board member of the school district;

is at least age 16 and repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and such conduct does not constitute other grounds for expulsion under Section 120.13(1)(c) of the Wisconsin Statutes; and/or:

while at school or while under the supervision of a school authority, possessed a firearm (as defined by 18 U.S.C. 921(a)(3)).

The administration believes proof of the above misconduct would establish that the interest of the school demands (pupil's name) expulsion.

At the expulsion hearing, the pupil, and if the pupil is a minor, the pupil's parent or guardian, may be represented by counsel, may present evidence, cross examine witnesses, and review and obtain copies of evidentiary materials.

If the School Board orders expulsion, the School District Clerk shall mail a copy of the expulsion order to the pupil and, if the pupil is a minor to his/her parent(s) or guardian(s). If expelled by the School Board, the pupil, or if a minor, the pupil's parent(s) or guardian(s), may appeal the School Board's decision to the Department of Public Instruction. If the School Board's decision is appealed to the Department, within 60 days after the date on which the Department receives the appeal, the Department shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the School Board shall be enforced while the Department reviews the School Board's decision. An appeal from the decision of the Department may be taken within 30 days to the Circuit Court for the county in which the school is located.

The state statutes related to student expulsions are Sections 119.25 (for Milwaukee Public Schools only) and 120.13(1) (for all other public school districts) Wisconsin Statutes.

PLEASE TAKE FURTHER NOTICE that if the misconduct cited above is proven in considering whether to expel (pupil's name), and if so, for what period of time, the Board may consider (pupil's name) complete disciplinary and academic records. These records are available for your review as outlined in Section 118.125, Wisconsin Statutes.

Should you have any questions in regard to this letter or the hearing, please feel free to contact the undersigned.

Sincerely,

PUPIL EXPULSION: Outline of Procedures and Rights

Since you and your parents have appeared without a lawyer, I will outline some of your rights and the procedures we will be following tonight. This is not intended to tell you all your rights. I will mention the most important ones and try to explain in plain language some of your choices.

First, the school administration has the burden to show whether you should be expelled, and, if so, for how long. The district will go first with its witnesses. Before a witness testifies, he or she will be sworn to tell the truth. A record (or minutes) is made of everything which is said. You and your parent(s) may ask questions or cross examine each school witness after the school attorney is finished with his or her questions. The purpose of all witness testimony is to establish what happened — who did and said what and when. Your questions should be designed to clarify these things. You should not argue with a witness.

After the school witnesses have testified and the school's attorney, board members and you have had a chance to ask questions, you and your parent(s) may call witnesses. If you do, you may ask questions first, after which the school attorney and board members will be given a chance to ask their questions or cross examine. The board attorney and you may also offer documents or papers if any are relevant to this hearing.

You and your parent(s) will also be given two different personal opportunities to address the board. The first is by testimony as a witness. Just like other sworn testimony, you will testify first in answer to questions asked by your parents, or to testify directly on your own as to what happened, who said and did what, and when. After that direct testimony, the board attorney and board members will be able to ask their questions or cross examine. After their questions, you can testify further to clarify anything. Of course, you have a right to remain silent as well. No one can make you testify.

The second personal opportunity for you and your parents to address the board is near the end of the hearing. This second opportunity is called a closing statement or closing argument. You will be asked whether you want to make a closing statement after the board attorney makes his or her closing argument. Like its name implies, this is not sworn testimony but is a summary, persuasive argument in which you generally address two points both focusing on the word "why." First, if there has been any dispute in what happened, you will want to argue why or give reasons why your view of what happened is what happened and not what someone else said happened. Second, whether you dispute what anyone says happened, you will want to give any reasons why you should not be expelled, why perhaps something else should be done with you. You may also want to comment on the length of any possible expulsion.

Neither you nor your parent(s) have to testify or give a closing argument. You and your parent(s) can do one, or the other, or both or neither. No one can force you or promise you anything to get you to do or not do either. It is your choice.

But please understand the board must decide whether it is going to expel you. It is going to decide with your testimony or closing argument or without them. Again, whether to testify or give a closing argument is entirely up to you.

The board's decision will be made in closed session after the hearing is over. You will be notified of that decision shortly by mail. If you are expelled, you will have the right to appeal that decision to the State Superintendent of Public Instruction in Madison.

Now, do you or your parents have any questions about your rights or the procedures? If not, I will ask the board attorney to proceed.

THE BOARD OF EDUCATION

OF THE

SCHOOL DISTRICT

In the Matter of Expulsion
of _____
From the Schools of the
_____ School District

FINDINGS OF FACT
AND EXPULSION ORDER

NATURE OF THE CASE

The above-referenced matter having duly come on for hearing before the Board of Education of the _____ School District on _____, 20____ pursuant to Section 120.13(1)(c) of the Wisconsin Statutes, the Board upon a review of the testimony and other evidence presented, makes the following Findings of Fact and Order regarding the expulsion of (pupil's name):

(As Applicable)

FINDINGS OF FACT

1. That the pupil, _____, is enrolled at _____ school in the ____th grade.
2. That on _____, 20____, a School District representative, _____, by letter dated _____, 20____, notified the pupil, _____, (and if a minor, the pupil's parent(s) or guardian(s), _____,) that the pupil had been referred to the School Board for expulsion proceedings and, further, that the letter specified the time, date, and place of the proceedings. As required by law, such Notice contained the notification of rights as required by Section 120.13(1)(c)4, of the Wisconsin Statutes, disclosing the authority for the expulsion proceedings. Further the pupil, _____, (and, if a minor, the pupil's parent(s) or guardian(s), _____,) received five (5) days' notice of the expulsion hearing.
3. That the pupil (and, if applicable, the pupil's parent(s) or guardian(s)) (did) (did not) appear at the expulsion proceeding and (if applicable) were represented by _____.

4. That the pupil on _____ did:

(list or attach specific misconduct which the board found to have occurred. The misconduct found to have occurred must have been included in the Notice of Expulsion)

5. If pupil is Exceptional Education Needs pupil: That the appropriate group considered and determined that the pupil's misconduct (was – cannot expel) (was not) related to any exceptional educational needs.

6. That based on the conduct described in paragraph 4 above, the pupil (mark or list appropriate grounds – Grounds must have been included in prior written Notice of Expulsion Hearing and established at hearing):

REPEATEDLY refused or neglected to obey school rules;

knowingly conveyed or caused to be conveyed 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;

engaged 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, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority;

engaged in conduct which endangered the property, health, or safety of (an employee) (school board member) or the school district in which the pupil is enrolled;

is at least age 16 and repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and such conduct does not constitute other grounds for expulsion under Section 120.13(1)(c)1 of the Wisconsin Statutes;

and/or

while at school or while under the supervision of a school authority, possessed a firearm (as defined by 18 U.S.C. 921(a)(3)); or

did NOT engage in misconduct of the nature set forth above which would constitute grounds for expulsion as set forth in § 120.13(1)(c), Stats.

7. That the Board has weighed the interests of the pupil and the pupil's fellow students, faculty, and staff and has found that the appropriate remedy *(is) (is not)* expulsion and that the interests of the School *(do) (do not)* demand the student's expulsion.

ORDER

IT IS HEREBY ORDERED:

That the pupil, _____, is hereby expelled from the schools of the _____ School District form _____, 20____, to _____, 20____.

OR

The expulsion proceeding is dismissed.

The School District Clerk is directed to send a copy of this Findings of Fact and Order to the pupil (and, if the pupil is a minor, by separate mail to the pupil's parent(s) or guardian(s)). The Clerk shall further inform the pupil (and, if applicable: the pupil's parent(s) or guardian(s)) that the Board's decision may be appealed to the Department of Public Instruction.

Adopted by the action of the School Board of the _____ School District this ____ day of _____, 20____.

School Board President

School District Clerk

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(School District Letterhead)

_____, _____, _____
Month Day Year

(Name of Parent/Guardian)
(Address)

Dear _____:

The purpose of this letter is to advise you that the School Board of _____ School District adopted the attached Findings of Fact and Order directing that your child, _____, (be) (not be) expelled from school. This Order was issued by the School Board at the conclusion of the expulsion hearing held on _____, _____. (If expelled add: You may appeal the Board's decision to the Department of Public Instruction.)

Should you have any questions in regard to this matter, please feel free to contact the undersigned and/or _____, District Administrator.

Sincerely,

Name
School Clerk

Encl:

*If student is a minor, send by mail to parent(s) or guardian(s) separately from mailing to student.

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_____, 20__

(Student's Name)
(Address)

Dear _____:

The purpose of this letter is to advise you that the School Board of the _____ School District adopted the attached Findings of Fact and Order directing that you (be) (not be) expelled from school. This order was issued by the School Board at the conclusion of the expulsion hearing held on _____, 20__. (If expelled add: You may appeal the Board's decision to the Department of Public Instruction.)

Should you have any questions in regard to this matter, please feel free to contact the undersigned and/or _____, the District Administrator.

Sincerely,

School District Clerk

Encl.

*Send to student and, if minor, send to parent(s) or guardian(s) as well by separate mail.

Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657.

RACINE UNIFIED SCHOOL DISTRICT, et al., Petitioners-
Respondents and Cross-Appellants,

v.

Barbara THOMPSON, State Superintendent of Public
Instruction, Respondent-Appellant and
Cross-Respondent.

Court of Appeals

No. 80-2202. Argued September 29, 1981.—Decided May 19, 1982.
(Also reported in 321 N.W.2d 334.)

1. Appeal and Error § 645*—moot questions—issues of public importance.
Though, as general rule, appellate courts will not entertain moot questions, they will do so if it is of great public importance.
2. Appeal and Error § 645*—moot questions—issues of public importance—student expulsion hearings.
Questions of what measure of due process is required at school board student expulsion hearing, and what powers of review state superintendent of public instruction has on appeal, are of significant statewide importance and merited attention on appeal from judgment overturning order of such superintendent reversing expulsion on ground hearsay was inadmissible at expulsion hearing, and court of appeals would reach merits of controversy even though student in question had long since been reinstated and had been graduated from high school.
3. Schools § 137*—student expulsion hearings—due process rights.
Student is entitled to due process at school board student expulsion hearing, with process due student determinable by balancing deprivation at stake with efficiency possible in hearing and ability of school board to implement those protective procedures.
4. Schools § 137*—student expulsion hearings—hearsay evidence.
Hearsay statements from school teachers or staff members were admissible at school board student expulsion hearing.

* See Callaghan's Wisconsin Digest, same topic and section number.

Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657.

5. Appeal and Error § 632*—extent of review—questions of law. Questions of law are always reviewable by court on appeal.
6. Appeal and Error § 632*—extent of review—questions of law—conclusion of state superintendent of public instruction. Conclusion of state superintendent of public instruction that hearsay was impermissible at school board student expulsion hearing was conclusion of law reviewable on appeal.
7. Administrative Law § 85*—judicial review—substitution of judgment.
Where material facts are not in dispute and only question is one of law, reviewing court may substitute its judgment for that of agency.
8. Administrative Law § 17*—school boards—definition within statute.
School boards are not "boards" within meaning of section of act pertaining to administrative procedure and review defining boards (Stats § 277.01(1)).
9. Administrative Law § 88*—judicial review—appellate court.
Court of appeals will not reverse court decision though reason for decision may have been erroneously or inadequately expressed.
10. Schools § 137*—student expulsion hearings—statutory construction.
Statutory subsection authorizing school board to expel pupil authorizes board to take testimony in course of expulsion hearing (Stats § 120.13(1)(c)).

APPEAL from a judgment of the circuit court for Racine county: JAMES WILBERSHIDE, Judge. *Affirmed.*

For the respondent-appellant and cross-respondent there was a brief by *Bronson C. La Follette*, attorney general, and *Daniel D. Stier*, assistant attorney general. Oral argument by *Daniel D. Stier*.

For the petitioners-respondents and cross-appellants there was a brief by *Gilbert J. Berthelsen* and *Arthur P.*

* See Callaghan's Wisconsin Digest, same topic and section number.

Court of Appeals

Simpson of Capwell, Berthelsen, Nolden & Casanova, Ltd. of Racine. Oral argument by Gilbert J. Berthelsen. Before Voss, P.J., Brown and Scott, JJ.

BROWN, J. State Superintendent of Public Instruction Barbara Thompson¹ appeals from a judgment overturning her order reversing an expulsion on the ground that hearsay was inadmissible at a school board student expulsion hearing. We conclude that a student's right to due process in an expulsion hearing is satisfied even though some of the testimony presented was hearsay given by members of the school staff. For this reason, we affirm the judgment of the circuit court.

On March 3, 1980, V.O., an eleventh-grader at J.I. Case High School in Racine was requested by Assistant Principal Christiansen to consent to a locker search because a student had reported to him that his class ring had been stolen, and V.O. was the only student present when the ring disappeared. At his locker, V.O. reached inside the pocket of a jacket hanging inside and produced the ring. V.O. was then questioned by school authorities.

An expulsion hearing was set for March 13, 1980, pursuant to sec. 120.13(1)(c), Stats. The procedural mandates of the statute were apparently followed, as it is only the admission of hearsay testimony presented at the hearing to prove the ring itself was stolen or missing that is challenged on appeal. At the hearing, Mr. Johnson, the Director for Pupil Personnel, gave an outline of the events of March 3, much of which was hearsay. His outline of the events was corroborated, in large part, however, by the testimony given by Mr. Christiansen and two other staff members. Testimony was also given by the accused student and his mother. Only the student

¹ As of July 6, 1981, the state superintendent of public instruction is Herbert Grover.

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whose ring was stolen did not testify. It is this last discrepancy that forms the crux of the issue on appeal.

The board ultimately ordered expulsion. The student appealed to the state superintendent, pursuant to sec. 120.13(1)(c), Stats., who reversed the expulsion on the ground that there was no competent evidence in the record to support the expulsion. That decision was itself appealed to the circuit court, which reversed the state superintendent, holding that the state superintendent's hearsay ruling was erroneous, primarily because a school board could not compel the attendance of witnesses. While we affirm the circuit court's judgment, we do so on due process grounds and not on the basis of the board's lack of subpoena power. We conclude that the board has subpoena power.

[1, 2]

First, we must address the question of mootness, since the student in question has long since been reinstated and has already graduated from high school. Though, as a general rule, appellate courts will not entertain moot questions, they will do so if it is of great public importance. *State ex rel. Waldeck v. Goedken*, 84 Wis. 2d 408, 413, 267 N.W.2d 362, 363 (1978). Clearly, the questions of what measure of due process is required at an expulsion hearing and what powers of review the state superintendent has on appeal are of significant statewide importance and merit attention. We will, therefore, reach the merits of the controversy.²

Thompson's primary contention is that the Racine school district could not rely on hearsay evidence in an

² This court initially certified this case to the Wisconsin Supreme Court, pursuant to Rule 809.61, Stats., in the belief that this hearsay question, which is of first impression in this state, was of significant enough importance to merit their attention. The supreme court refused the certification, and we are left to make the decision.

Court of Appeals

expulsion hearing. We disagree and accordingly affirm the judgment of the circuit court.

This particular question of the use of hearsay in school expulsion hearings is of first impression in Wisconsin. Moreover, a review of other jurisdictions demonstrates that the law is unsettled.

We begin with the United States Supreme Court's discussion of due process in school disciplinary hearings from *Goss v. Lopez*, 419 U.S. 565 (1975). The *Goss* case involved a short-term suspension ordered by a school principal without a hearing, pursuant to Ohio Rev. Code Ann. § 3313.66 (1972). The Court affirmed the lower court's holding that due process had been denied the suspended students in that they had been denied a hearing.

[3]

While *Goss* is distinguishable on its facts, it is valuable in that it suggests, in *dicta*, what process is due in cases similar to the one at bar. First, the Court reiterated the principle that, as long as a property deprivation is not *de minimis*, due process, in some form, must be accorded. *Goss*, 419 U.S. at 575-76. Since the Court in *Goss* found due process to attach in a short-term suspension, there can be no question but that it attaches here, *a fortiori*. "Once it is determined that due process applies, the question remains what process is due." *Goss*, 419 U.S. at 577, quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

The Court concluded by stating:

We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to call his own witnesses to verify his version of the incident.

We should also make it clear that we have addressed ourselves solely to the short suspension, not exceeding 10

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days. *Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.* [Emphasis added.]

Goss, 419 U.S. at 583-84.

It should be clear, then, that the procedures followed in the case at bar satisfied and exceeded the process required by the United States Supreme Court for short-term suspensions. The question still remains, however, whether what was accorded was sufficiently "more formal" to suffice for a long-term expulsion.

Some further guidance may be gleaned from a later Supreme Court case, *Board of Curators v. Horowitz*, 435 U.S. 78 (1978). In discussing *Goss*, the Court emphasized due process as providing a "meaningful hedge against erroneous action." *Horowitz*, 435 U.S. at 89. But the Court found that the need for a *formal* hearing in a disciplinary action was tempered by its cost and its effectiveness as a part of the teaching process. *Id.*

Clearly, then, the process due a student in a disciplinary action is to be determined by balancing the deprivation at stake with the efficiency possible in the hearing and, we believe, the ability of the school board to implement those protective procedures.

There are a number of federal cases which have addressed the question of the admissibility of hearsay at a disciplinary hearing, but many are distinguishable on their facts, and, in any case, their holdings are mixed.³

³ *Tasby v. Estes*, 643 F.2d 1103 (5th Cir 1981) (hearsay allowed in hearings for serious student offenses); *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697 (5th Cir 1974), *cert. denied*, 420 U.S. 962 (1975) (hearsay allowed in suspension/expulsion hearings); *Linwood v. Bd. of Educ.*, 463 F.2d 763 (7th Cir.), *cert. denied*, 409 U.S. 1027 (1972) (hearsay allowed by implication in expulsion hearing); *Whiteside v. Kay*, 446 F. Supp. 716 (W.D. La. 1978) (hearsay allowed by implication at expulsion hearing); *Fieldler v. Bd. of Educ.*, 346 F. Supp. 722 (D. Neb. 1972) (hearsay not allowed by implication at expulsion hearing); *DeJesus v.*

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This court is particularly persuaded by the rationale in favor of admitting hearsay as presented in *Boykins v. Fairfield Board of Education*, 492 F.2d 697 (5th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975).⁴ There, twenty-one black students were subject to disciplinary procedures as a result of a boycott of the school. Ultimately, four were readmitted immediately, eight were readmitted after a week's further suspension, one was suspended for the remainder of the semester and eight were expelled.

At the hearing, the school principal, who had investigated the charges against the students, read statements made by teachers in response to his inquiries. Appellants argued that their expulsions ought not rest upon hearsay. The fifth circuit court disagreed:

There is a seductive quality to the argument—advanced here to justify the importation of technical rules of evidence into administrative hearings conducted by laymen—that, since a free public education is a thing of great value, comparable to that of welfare sustenance or the curtailed liberty of a parolee, the safeguards applicable to these should apply to it. . . . In this view we stand but a step away from the application of the *strictissimi juris* due process requirements of criminal trials to high school disciplinary processes. And if to high school, why not to elementary school? It will not do.

Basic fairness and integrity of the fact-finding process are the guiding stars. *Important as they are, the rights at stake in a school disciplinary hearing may be fairly determined upon the "hearsay" evidence of school administrators charged with the duty of investigating the incidents. We decline to place upon a board of lay-*

Penberthy, 344 F. Supp. 70 (D. Conn. 1972) (hearsay not allowed in hearing for thirty-day suspension).

⁴ Even though this case predates the United States Supreme Court holding in *Goss v. Lopez*, 419 U.S. 565 (1975), the hearsay principles set forth in it have been recently reaffirmed by the Fifth Circuit in *Tasby v. Estes*, 643 F.2d 1103 (5th Cir. 1981).

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men the duty of observing and applying the common-law rules of evidence. [Emphasis added.]

Boykins, 492 F.2d at 701.

[4]

We are persuaded, finally, that the hearsay statements from schoolteachers or staff members were admissible. We agree with the fifth circuit's statement that a lay board cannot be expected to observe the niceties of the hearsay rule. Moreover, in the absence of an allegation of bias, we can conceive of no reason why school staff would fabricate or misrepresent statements of this sort. Such statements have, then, sufficient probative force upon which to base, in part, an expulsion.

[5-7]

There can be no question but that the state superintendent's conclusion that hearsay was impermissible was itself a conclusion of law. Questions of law are always reviewable by the court. *Bucyrus-Erie Co. v. ILHR Department*, 90 Wis. 2d 408, 417, 280 N.W.2d 142, 146 (1979). Where the material facts are not in dispute and the only question is one of law, the court may substitute its judgment for that of the agency. *Frito-Lay, Inc. v. Wisconsin Labor & Industry Review Commission*, 95 Wis. 2d 395, 400, 290 N.W.2d 551, 555 (Ct. App. 1980). This the circuit court has done, and, while this court's rationale varies from that offered by the circuit court, the end result is identical.

[8]

Appellant argues that hearsay was inadmissible as shown by cases founded in ch. 227, Stats. We find these cases to be inapposite. Section 227.01(1), Stats., defines "agency," which is the term used throughout ch. 227 to signify the applicable governmental unit, as "any board, commission, committee, department or officer *in the state government*, except the governor or any military

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or judicial officer of this state." (Emphasis added.) School boards are not "boards" within the meaning of sec. 227.01(1), Stats. *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 263-64, 111 N.W. 2d 198, 210 (1961), *appeal dismissed*, 370 U.S. 720 (1962). They are entities created under ch. 120, Stats.

The only applicable statute setting forth school board powers is sec. 120.13(1), Stats.⁵ Particularly pertinent

⁵ Section 120.13(1), Stats., in its entirety, reads as follows:

120.13 School board powers. The school board of a common or union high school district may:

(1) School government rules; suspension; expulsion. (a) Make rules for the organization, gradation and government of the schools of the school district, including rules pertaining to conduct and dress of pupils in order to maintain good decorum and a favorable academic atmosphere, which shall take effect when approved by a majority of the school board and filed with the school district clerk.

(b) The school district administrator or any principal or teacher designated by the school district administrator also may make rules, with the consent of the school board, and may suspend a pupil for not more than 3 school days or, if a notice of expulsion hearing has been sent under par. (c), for not more than a total of 7 consecutive school days for noncompliance with such rules or school board rules, or for 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, or for conduct by the pupil while at school or while under the supervision of a school authority which endangers the property, health or safety of others, or for conduct while not at school or while not under the supervision of a school authority which endangers the property, health or safety of others at school or under the supervision of a school authority. Prior to any suspension, the pupil shall be advised of the reason for the proposed suspension. The pupil may be suspended if it is determined that the pupil is guilty of noncompliance with such rule, or of the conduct charged, and that the pupil's suspension is reasonably justified. The parent or guardian of a suspended minor pupil shall be given prompt notice of the suspension and the reason for the suspension. The suspended pupil or the pupil's parent or guardian may, within 5 school days following the commencement of the suspension, have a conference with the school district

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is subsection (c), which authorizes a school board to expel a pupil for, among other reasons, conduct which endangers the property of others. The statute then sets

administrator or his or her designee who shall be someone other than a principal, administrator or teacher in the suspended pupil's school. If the school district administrator or his or her designee finds that the pupil was suspended unfairly or unjustly, or that the suspension was inappropriate, given the nature of the alleged offense, or that the pupil suffered undue consequences or penalties as a result of the suspension, reference to the suspension on the pupil's school record shall be expunged. Such finding shall be made within 15 days of the conference. A pupil suspended under this paragraph shall not be denied the opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed 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, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion. Prior to such expulsion, the school board shall hold a hearing. Not less than 5 days' written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel. The school board shall keep written minutes of the hearing. Upon the ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent

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forth the procedural standards which the school board must follow: (1) The student is entitled to notice of a hearing; (2) The student is entitled to counsel at the hearing; (3) The hearing may be closed at the student's request; (4) The board must keep written minutes of the hearing; (5) If expulsion is ordered, such order shall be mailed to the student; and (6) An expelled student may appeal the expulsion to the state superintendent.⁶ No one disputes, on this appeal, whether the statutory precepts of sec. 120.13(1)(c), Stats., were satisfactorily followed.

It is the latter portion of subsection (c) which entitles the expelled student to appeal the expulsion to the state superintendent. While our decision here is founded solely upon an error of law of the state superintendent, we point out, *obiter dicta*, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely, sec. 120.13(1)(c), Stats. The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc.

[9, 10]

Finally, while we agree with the circuit court's determination that the superintendent erred with respect to her hearsay determination, we do not concur with the circuit court's founding of its decision upon the lack of a school board's subpoena power. We will not reverse a

or guardian. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located. This paragraph shall be printed in full on the face or back of the notice.

⁶ Throughout this list, the statute specifies that, where the student is a minor, the parents or guardian shall be entitled to notice, option of counsel, etc.

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court decision though the reason for that decision may have been erroneously or inadequately expressed. *Muel-ler v. Mizia*, 33 Wis. 2d 311, 318, 147 N.W.2d 269, 273 (1967).

Section 885.01(4), Stats., provides as follows:

885.01 Subpoenas, who may issue. The subpoena need not be sealed, and *may be signed and issued as follows:*

. . . .
(4) *By any arbitrator, coroner, medical examiner, board, commission, commissioner, examiner, committee or other person authorized to take testimony, or by any member of a board, commission, authority or committee which is authorized to take testimony, within their jurisdictions, to require the attendance of witnesses, and their production of documentary evidence before them, respectively, in any matter, proceeding or examination authorized by law; and likewise by the secretary of revenue and by any agent of the department of agriculture, trade and consumer protection. [Emphasis added.]*

We are persuaded that sec. 120.13(1)(c), Stats., authorizes a school board to take testimony in the course of an expulsion hearing. The broad language of sec. 885.01(4), Stats., is clearly satisfied, then, by a school board conducting an expulsion hearing.

We therefore affirm the decision of the trial court reversing the order of the state superintendent because we find that the state superintendent was in error in finding hearsay inadmissible at the expulsion hearing.

By the Court.—Judgment affirmed.

Cases Determined
IN THE WISCONSIN SUPREME
COURT AND WISCONSIN
COURT OF APPEALS

MADISON METROPOLITAN SCHOOL DISTRICT, Petitioner-
Respondent,

v.

Wisconsin DEPARTMENT OF PUBLIC INSTRUCTION, Lee
Sherman Dreyfus, Interim State Superintendent of
Public Instruction, Respondents-Appellants.

Court of Appeals

*No. 94-0199. Submitted on briefs October 6, 1994.—Decided
December 28, 1995.*

(Also reported in 543 N.W.2d 843.)

RESEARCH REFERENCES

Am Jur 2d, Schools §§ 65-67, 278-291.

See ALR Index under Expulsion; Schools and Education.

**1. Administrative Law § 88*—agency decision—appel-
late review—which decision reviewed.**

In court of appeals' review of case where state superinten-
dent of public instruction concluded that school board had
failed to comply with procedural requirements regarding
student suspension and expulsion and reversed expulsion
of student and circuit court reversed state superintendent's
decision, court of appeals reviewed state superintendent's

*See Callaghan's Wisconsin Digest, same topic and section number.

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decision, not that of trial court, but their review was identical to that of circuit court.

2. **Schools § 40*—superintendent—powers.**

Like heads of all administrative agencies, state superintendent possesses only such power as is expressly conferred or necessarily implied from statutes under which he operates.

3. **Schools § 40*—superintendent—powers—questions of law.**

Extent of authority expressly conferred on state superintendent of instruction or necessarily implied from statutes under which he operates is question of law.

4. **Administrative Law § 89*—appellate review—agency's statutory authority—review standard.**

Court of appeals owes no deference to agency's determination concerning its own statutory authority.

5. **Schools § 40*—superintendent—powers—review of suspension proceeding.**

State superintendent of public instruction may not review suspension proceeding under statutory provision governing student suspension since neither pupil nor his or her parents nor guardian has right of appeal to state superintendent because of error in suspension proceeding under that statutory provision, nor does provision expressly confer on state superintendent power to review suspension, and since nothing in statutory provisions governing student expulsions and state superintendent's review powers expressly authorizes superintendent to review challenged suspension when superintendent reviews expulsion decision (Stats § 120.13(1)(b), (c), and (e)).

6. **Schools § 137*—suspension of student—expiration of fifteen-day suspension—failure to allow student to return.**

School district errs when it fails to permit pupil to return to school after fifteen-day suspension period allowed under

*See Callaghan's Wisconsin Digest, same topic and section number.

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statute expired since only reasonable reading of statutory provision is that if pupil is given notice of expulsion hearing, then maximum permissible suspension is total of fifteen consecutive school days, where purpose of fifteen-day maximum suspension is to give district time to hold hearing and decide whether to expel student and if expulsion does not result within fifteen-day period, suspension ends and pupil returns to school and if expulsion is ordered after fifteen-day suspension ends and pupil has returned to school, pupil is expelled from and after date of expulsion order (Stats § 120.13(1)(b)).

7. Schools § 137*—suspension of student—waiver or extension of period—questions of fact and law.

Waiver and extension of fifteen-day suspension period provided for under statute raises questions of mixed fact and law (Stats § 120.13(1)(b)).

8. Schools § 40*—superintendent—review of suspension—appeal from expulsion decision—legislature's implied grant of power.

Legislature did not impliedly grant state superintendent of public instruction power to review suspension under statutory provision setting maximum fifteen-day limit on suspensions if notice of expulsion hearing has been sent in appeal from expulsion decision under statutory provisions governing expulsion, despite superintendent's argument that if he did not have that authority, school district could violate suspension provision with impunity, even though it intended to pursue expulsion, because inability of state superintendent to review suspension was not critical to state superintendent's power to review expulsion, suspension was local matter and review of suspension at state superintendent's level was not necessary to accomplish legislature's purpose of suspension, to bring together pupil, his or her parent or guardian, teachers, counselors and school officials to discuss and resolve pupil's academic and disciplinary problems, dicta in prior case indicated that superintendent's review of school board's expulsion hear-

*See Callaghan's Wisconsin Digest, same topic and section number.

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ing was limited to statutory provisions governing expulsions, and five years after court of appeals announced dicta in prior case, legislature amended statute but did not expand superintendent's authority to include review of suspension order under governing provision in expulsion appeal or otherwise (Stats § 120.13(1)(b), (c), and (e)).

9. Administrative Law § 9*—implied agency powers—reasonable doubt—resolution.

Any reasonable doubt as to existence of implied power in agency should be resolved against it.

10. Administrative Law § 9*—implied agency powers—legislative intent—inferences.

Whether agency power is to be implied turns on intent of legislature and such intent to confer power may be inferred when power rises from fair implication from expressed powers or if power is necessarily implied by statutes under which agency operates.

11. Statutes § 231*—absurd results—avoidance.

Absurd results are to be avoided when interpreting statute.

12. Courts § 141*—dicta—state superintendent of public instruction—authority to review suspension proceeding—dicta surviving legislative amendment—weight to dicta.

In review of circuit court's order reversing decision of state superintendent of public instruction to reverse local school board's expulsion decision, where, in dicta in prior case, court of appeals stated that superintendent's review of school board's expulsion hearing appeared to be limited by statutory provisions governing expulsion, court of appeals gave considerable weight to dicta on issue of whether state superintendent had authority to review suspension proceedings because state superintendent had applied dicta and its applicability to statutory provision governing student suspension survived legislative activity regarding

*See Callaghan's Wisconsin Digest, same topic and section number.

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statute governing both suspension and expulsion (Stats § 120.13(1)(b), (c), and (e)).

SUNDBY, J., concurs.

APPEAL from an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

For the respondents-appellants the cause was submitted on the brief of *James E. Doyle*, attorney general, with *Warren D. Weinstein*, assistant attorney general.

For the petitioner-respondent the cause was submitted on the brief of *Jill Weber Dean* and *Frank C. Sutherland* of *Lathrop & Clark* of Madison.

Before Eich, C.J., Gartzke, P.J., and Sundby, J.

GARTZKE, P.J. Madison Metropolitan School District suspended and later expelled a Madison middle school pupil. The state superintendent of public instruction reversed the expulsion decision, and the circuit court reversed the state superintendent's decision. The department of public instruction and the state superintendent appeal from the circuit court's order.

The issues are whether (1) the state superintendent exceeded his authority when he ruled that the district failed to comply with the time limit on a suspension under § 120.13(1)(b), STATS., the controlling statute; (2) the state superintendent lacked authority to review a "home study agreement" in an expulsion proceeding; and (3) the student on homebound study was suspended within the meaning of § 120.13(1)(b). We hold that the state superintendent lacked authority to review the suspension. We affirm the judgment.

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I. FACTS

On December 4, 1992, a seventh grade pupil brought an unloaded BB pistol to his Madison middle school. An assistant school principal suspended the pupil for three days for bringing the gun to school.

On December 9, 1992, the pupil and his parents met with principal Dr. Marvin Meissen and assistant superintendent of secondary education Dr. Shirley Baum. The pupil's mother signed an offer of homebound studies agreement.¹ The agreement provided that the pupil would receive homebound instruction from December 9, 1992, to January 15, 1993.² The homebound instruction program provides a pupil with "one-on-one" educational services from a teacher outside the school for at least two hours a day, five days a week. Dr. Baum stated on the form that she recommended homebound instruction because of expulsion.

The district considers the homebound studies agreement as part of a larger agreement concerning the expulsion. It contends that the meeting produced an "oral agreement" on a disposition which included

¹The homebound study program is statutory. Section 118.15(1)(d), STATS.

Any child's parent or guardian, or the child if the parent or guardian is notified, may request the school board, in writing, to provide the child with program or curriculum modifications, including but not limited to:

.....

5. Homebound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.

²The homebound instruction continued after January 15, 1993, until the student's expulsion two months later.

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expulsion for a limited period combined with homebound instruction prior to the expulsion.

On December 11, 1992, Dr. Meissen wrote to the pupil and his parents, stating that the letter "confirms the decision to expel you" and invoking the school policy that required him to recommend that action. He enclosed a copy of the three-day suspension form that had been signed on December 4.

The parents obtained counsel who requested a meeting with Dr. Baum. At the meeting on January 20, 1993, the district refused to consider placement in homebound instruction as a sufficient disposition in lieu of expulsion. The same day the district issued notices of expulsion to the pupil and his family, setting a hearing date for January 26. The parties agreed to postpone the hearing until February 4. At the hearing, Dr. Baum recommended that the student receive a nine-week period of no services.

On February 22, 1993, a hearing officer recommended expulsion and ordered the homebound instruction continued until the district school board acted on his decision. On March 15 the school board approved an amended version of the order. The board directed that expulsion begin immediately and continue to the end of the second semester of the 1992-93 school year but that the district offer an alternative Madison School District program on April 19, 1993, until the end of the semester.

The pupil appealed his expulsion to the state superintendent. On May 17, 1993, the superintendent, in the person of the deputy superintendent, found that the pupil had not been permitted to return to school after the fifteen-day suspension authorized in § 120.13(1)(b), STATS., had expired and that the suspension continued, notwithstanding the homebound study

agreement. The state superintendent concluded that the school board had failed to comply with all of the procedural requirements of § 120.13(1)(b), the suspension subsection, and § 120.13(1)(c), an expulsion statute. He reversed the expulsion.

The circuit court held that the state superintendent has no authority to review procedural errors concerning suspensions under § 120.13(1)(b), STATS., and a procedural error under that subsection did not invalidate the expulsion.

Other facts will be stated in our opinion.

II. SCOPE OF APPELLATE REVIEW

[1]

We review the department's decision, not that of the trial court, *WSEU v. Wisconsin Employment Rel. Comm'n*, 189 Wis. 2d 406, 410, 525 N.W.2d 783, 785 (Ct. App. 1994), but our review is identical to that of the circuit court. *Boynton Cab Co. v. DILHR*, 96 Wis. 2d 396, 405-06, 291 N.W.2d 850, 855 (1980). We must set aside or modify the superintendent's decision if we find he erroneously interpreted a provision of law. Section 227.57(5), STATS.

[2-4]

Like the heads of all administrative agencies, the state superintendent possesses only such power as is expressly conferred or necessarily implied from the statutes under which he operates. *Grogan v. Public Service Comm'n*, 109 Wis. 2d 75, 77, 325 N.W.2d 82, 83 (Ct. App. 1982). The extent of that authority is a question of law. *Wisconsin Power & Light v. PSC*, 181 Wis. 2d 385, 392, 511 N.W.2d 291, 293 (1994). We owe no deference to an agency's determination concerning its own statutory authority. *Id.*

III. STATUTES INVOLVED

The pertinent statutes are § 120.13(1)(b) and (c) and (e), STATS. The relevant parts of those statutes are as follows:

The pupil suspension subsection, § 120.13(1)(b), STATS., provides

The school district administrator or any principal or teacher designated by the school district administrator also may . . . suspend a pupil for not more than 3 school days or, if a notice of expulsion hearing has been sent under par. (c) or (e) . . ., for not more than a total of 15 consecutive school days for noncompliance with . . . school board rules, or . . . for conduct by the pupil while at school . . . which endangers the property, health or safety of others

One pupil expulsion subsection, § 120.13(1)(c), STATS., provides

The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, . . . or finds that the pupil engaged in conduct while at school . . . which endangered the property, health or safety of others . . . and is satisfied that the interest of the school demands the pupil's expulsion. Prior to such expulsion, the school board shall hold a hearing. . . . The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. . . . [T]he state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the

circuit court of the county in which the school is located.

An alternative expulsion subsection, § 120.13(1)(e)1.b, STATS., provides that a school board may adopt a resolution authorizing an independent hearing officer appointed by the board to determine expulsions. Section 120.13(1)(e)2 provides that

the independent hearing officer . . . may expel a pupil from school whenever the hearing officer . . . finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c). . . . Within 30 days after the date on which the order is issued, the school board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the hearing officer . . . shall be enforced while the school board reviews the order. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the state superintendent. . . . [T]he state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located.

IV. SUPERINTENDENT'S AUTHORITY TO REVIEW SUSPENSION ERRORS IN AN EXPULSION³

³The parties unaccountably discuss this appeal in terms of a sub. (1)(c) expulsion. The appeal involves a sub. (1)(e) expulsion. It was noticed as such to the pupil and his parent, and tried as such by an independent hearing officer appointed as

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It is beyond dispute that a pupil or his or her parents or guardian has no right of appeal to the state superintendent because of error in a suspension proceeding under sub. (1)(b). Nor does that provision expressly confer on the state superintendent the power to review a suspension. Subsection (1)(b) contains no reference whatever to an appeal under any circumstances to the state superintendent or review by that officer.

[5]

It is also beyond dispute that sub. (1)(c) and (e) confer on a pupil or his or her parents or guardian an unqualified right to appeal an expulsion decision to the state superintendent and direct him to review it. Nothing in sub. (1)(c) and (e) expressly authorizes the superintendent to review a challenged suspension when the superintendent reviews an expulsion decision.

In the absence of an express authorization to the state superintendent in an expulsion appeal to review a suspension, the question is whether the legislature impliedly granted him that power.

However, if the school district did not err when it prevented the pupil's return to school after fifteen days from the notice of expulsion, we need not decide whether the state superintendent has the power to

provided in sub. (1)(e)1.b. The officer prepared findings, conclusions and a proposed expulsion order which the school board reviewed and modified, all as provided in sub. (1)(e)2. A transcript of the hearing record was prepared and furnished to the pupil's parent, as provided in sub. (1)(e)2. The expulsion order was based on conduct which constitutes grounds for expulsion under sub. (1)(c), as required under sub. (1)(e)2, but that did not convert this into a sub. (1)(c) expulsion. The error confuses the discussion but does not affect our disposition.

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review the suspension. If the school district did not err, the state superintendent based his order reversing the school district's expulsion decision on a false premise, and his order must be reversed for that reason alone.

[6]

We conclude that a school district errs when it fails to permit a pupil to return after a fifteen-day suspension expires. The only reasonable reading of sub. (1)(b) is that if a pupil is given a notice of expulsion hearing under sub. (1)(c) or (e), then the maximum permissible suspension is "a total of fifteen consecutive school days."⁴ The purpose of the fifteen-day maximum suspension must be to give the district time to hold the hearing and decide whether to expel the student. If expulsion does not result within the fifteen-day period, the suspension ends and the pupil may return to school. If expulsion is ordered after a fifteen-day suspension ends and the pupil has returned to school, the pupil is expelled from and after the date of the expulsion order.

[7]

The school district argues that the pupil's mother, by signing the offer of homebound study agreement, waived or extended the fifteen-day suspension. The state superintendent concludes that neither waiver nor extension occurred. Waiver and extension raise questions of mixed fact and law. *Reckner v. Reckner*, 105 Wis. 2d 425, 435, 314 N.W.2d 159, 164 (Ct. App. 1981).

⁴The legislature has given considerable attention to the maximum suspension and has repeatedly lengthened it. In 1973 it expanded the maximum time of suspension from three to seven days. Laws of 1973, Chapter 94, § 3. In 1989 it expanded the maximum time from seven to ten days. 1989 Wis. Act 31, § 2317b. In 1992 it expanded the time from ten to fifteen days. 1991 Wis. Act 269, § 650q.

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Because the state superintendent may not review a sub. (1)(b) suspension, his conclusions and the factual findings on which they are based are nullities. For that reason, we leave the waiver and extension issues without further discussion.

[8]

We turn to whether the legislature impliedly granted the state superintendent power to review a sub. (1)(b) suspension in an appeal from an expulsion decision under sub. (1)(c) or (e). We conclude it did not.

[9, 10]

Administrative powers are not freely and readily implied. Any reasonable doubt as to the existence of an implied power in an agency should be resolved against it. *Kimberly-Clark Corp. v. Public Service Comm'n*, 110 Wis. 2d 455, 462, 329 N.W.2d 143, 146 (1983). Whether a power is to be implied turns on the intent of the legislature. *Id.* Intent to confer such power may be inferred when the power rises from fair implication from expressed powers, *Wisconsin Environmental Decade, Inc. v. PSC*, 69 Wis. 2d 1, 16, 230 N.W.2d 243, 251 (1975), or if the power is necessarily implied by the statutes under which an agency operates. *Kimberly-Clark Corp.*, 110 Wis. 2d at 461-62, 329 N.W.2d at 146; *Racine Fire & Police Comm. v. Stanfield*, 70 Wis. 2d 395, 399, 234 N.W.2d 307, 309 (1975).

[11]

The power to review a suspension decision in an expulsion appeal cannot be fairly implied from sub. (1)(c) or (e), and we do not understand the state superintendent to argue otherwise. The state superintendent asserts, however, that he must, of necessity, hold authority to invalidate an expulsion preceded by an invalid suspension. He asserts that otherwise a school district could violate sub. (1)(b) with

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impunity, even though it intends to pursue an expulsion. The district could suspend a student for as many days as the district desires, and no need would exist for the fifteen-day suspension limit when notice of an expulsion hearing has been given. This, we are told, leads to an absurd result, and, of course, absurd results are to be avoided when interpreting a statute. *DeMars v. Lapour*, 123 Wis. 2d 366, 370, 366 N.W.2d 891, 893 (1985).

We acknowledge the force of the state superintendent's contention that his inability to review a faulty suspension order, when reviewing an expulsion order, allows a district to violate sub. (1)(b) with impunity, so far as review by the state superintendent is concerned. But it does not follow that the state superintendent must, of necessity, be able to review suspension in an expulsion appeal.

The inability of the state superintendent to review a suspension is not critical to a state superintendent's power to review an expulsion under sub. (1)(c) or (e). The state superintendent can review an expulsion, regardless whether suspension was improperly imposed. Nothing in the suspension provision, sub. (1)(b), even suggests that the superintendent must be able to review a suspension.

Suspension is a local matter. It occurs at a level different from that at which the state superintendent operates. In 1973, when the statute relating to suspension and expulsion was amended, the legislature described the purpose of suspension as follows:

The legislature finds that suspension of a pupil from school is for the purpose of bringing the pupil, his parent or guardian, teachers, counselors and

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school officials together to discuss and resolve the pupil's academic and disciplinary problems.

Laws of 1973, Chapter 94, § 1 (second sentence). Expulsion is reviewable at the state superintendent's level, but review of a suspension at that level is not necessary to accomplish the legislature's purpose behind suspension. Moreover, suspension is a less serious interruption of the student's attendance, because no suspension can exceed fifteen consecutive school days.

It may be that if a suspended student is not allowed to re-enter school following a fifteen-day suspension, in the absence of other circumstances, the suspension is tantamount to expulsion. If so, a school district may cause a de facto expulsion by unlawfully extending a suspension. We see little difference between a suspension and expulsion in § 120.13(1), STATS., except the duration of the time the student is not permitted to re-enter school. However, the reviewability of a de facto expulsion by the state superintendent or by the courts is not argued, and we do not reach it.

Moreover, we cannot overlook our admitted dicta in a 1982 decision. We said,

[W]e point out, *obiter dicta*, that the superintendent's review of a board's expulsion hearing would appear to be limited by the statute which created that appeal, namely sec. 120.13(1)(c), Stats. The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc.

Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334, 339 (Ct. App. 1982). In 1982 sub. (1)(e) did not exist, but what we said regarding

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sub. (1)(c) applies as well to sub. (1)(e) for purposes of determining the implied powers of the state superintendent over sub. (1)(b) suspensions. *Racine* did not involve the superintendent's power in an expulsion appeal to invalidate a preceding suspension, but the breadth of our dicta makes it arguably applicable to such a case.

[12]

Because the state superintendent has applied our *Racine* dicta, and its applicability to sub. (1)(b) has survived legislative activity regarding § 120.13(1), STATS., we conclude that we should give considerable weight to our dicta on the issue before us. See *Beloit Corp. v. DILHR*, 63 Wis. 2d 23, 31-32, 216 N.W.2d 233, 238 (1974) (reliance by legal profession on case given publicity indicates legislature probably acquiesced in dicta).

On several occasions the state superintendent has cited our *Racine* dicta for the proposition that the scope of the state superintendent's review is limited to § 120.13(1)(c), STATS., and impliedly sub. (1)(e).⁵ And

⁵*In the Matter of Expulsion of Nancy Z.*, Decision and Order No. 139, 86-EX-05 (May 23, 1986); *In the Matter of Expulsion of Jessie K.*, Decision and Order No. 131, 85-EX-03 (June 17, 1985); *In the Matter of Expulsion of Joshua K.*, Decision and Order No. 216, 93-EX-14 (January 31, 1994); *In the Matter of Expulsion of Bradley B.*, Decision and Order No. 107 (February 15, 1983); *In the Matter of Expulsion of Raymond M.*, Decision and Order No. 110 (February 27, 1983); *In the Matter of Expulsion of Jolene M.*, Decision and Order No. 112 (May 9, 1983); *In the Matter of Expulsion of Michaelene J.*, Decision and Order No. 161, 89-EX-02 (May 19, 1989); *In the Matter of Expulsion of Brandon H.D.*, Decision and Order No. 206, 93-EX-03 (May 3, 1993); *In the Matter of Expulsion of John R.*, Decision and Order No. 117 (February 9, 1994); *In the Matter of Expulsion of Michael C.G.*, Decision and Order, 93-EX-16 (February 11,

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we conclude from that frequency that our *Racine* dicta is embedded in Wisconsin school law with respect to the issue before us.

Finally, some five years after we announced our *Racine* dicta, the legislature considered the power of the state superintendent to review an expulsion order. It amended sub. (1)(c) to provide that the superintendent has the authority to "review, approve, reverse or modify" a school board's expulsion decision and created sub. (1)(e) with the same language. 1987 Wis. Act 88, §§ 3 and 4. Prior to the amendment, the statute did not specify the duties of the state superintendent in an expulsion appeal. *Id.* This is no occasion for us to construe the meaning of the language "review, approve, reverse or modify." The 1987 legislation shows, however, that notwithstanding the attention it has given to the powers of the state superintendent to review an expulsion decision under sub. (1)(c) and (e), the legislature has not expanded the state superintendent's authority to include review of a suspension order under sub. (1)(b), in an expulsion appeal or otherwise.

Because we conclude that the state superintendent lacks authority to review a suspension order in an appeal from an expulsion order under § 120.13(1)(e), STATS., we hold that the circuit court properly reversed the state superintendent's decision. We affirm the order of the circuit court.

We do so without discussing the due process issues raised in the concurring opinion. No due process issue regarding § 120.13(1)(b), STATS., was raised or discussed by the parties.

1994); *In the Matter of Expulsion of Brad S.*, Decision and Order No. 221, 94-EX-02 (March 7, 1994). In *Nancy Z., Jessie K. and Joshua K.*, the state superintendent held he lacked the power to review a sub. (1)(b) suspension in an expulsion appeal.

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By the Court.—Order affirmed.

SUNDBY, J. (*concurring*). I concur in the majority's conclusion that the state superintendent of public instruction erred in reversing the expulsion of Lenny R. by the Madison Metropolitan School District Board of Education. I believe it should be explained that the fifteen-day suspension under § 120.13(1)(b), STATS., is a disciplinary action and does not establish a time within which the board must act on a proposed expulsion.

At its March 15, 1993 meeting, the board of education adopted the examiner's decision¹ expelling Lenny "through April 23, 1993." However, the board amended the examiner's decision to provide that Lenny was expelled upon entry of the board's order to the end of the second semester of the 1992-93 school year, but that beginning April 19, 1993, the district would offer "homebound" instruction to Lenny until the end of the semester. The state superintendent reversed the expulsion because he concluded the board lost competency to hear the charges against Lenny because it did not complete the expulsion process within fifteen days after notice of the charges and hearing was served. The superintendent also concluded that the board erred in using the homebound program as a disciplinary tool. I conclude that the superintendent's decision in this respect is moot.

The superintendent reads § 120.13(1)(b), STATS., to require the school board to act on a notice of expulsion

¹The school board adopted the alternative expulsion procedure under § 120.13(1)(e)2, STATS., pursuant to which an independent hearing officer may expel a pupil after hearing, subject to review by the school board, appeal to the state superintendent, and judicial review.

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within fifteen days after the five-day notice of the proposed expulsion is given the child and the child's parents or guardian. In other words, the fifteen-day notice is an integral part of the expulsion proceedings and if the board does not act within that time, it loses jurisdiction or competency to expel the student. I disagree. I conclude that the fifteen-day period of suspension is disciplinary and is subject to the due process requirements of sub. (1)(b) and is not part of the due process procedures to hear expulsion charges.

Section 120.13(1)(b), STATS., provides in part:

The school district administrator or any principal . . . may suspend a pupil for not more than 3 school days or, *if a notice of expulsion hearing has been sent under par. (c) or (e)* . . . for not more than a total of 15 consecutive school days for noncompliance with . . . school board rules

(Emphasis added.)

The school district administrator or his or her designee may suspend a pupil without review or approval by the school board. No hearing is required but, "[p]rior to any suspension, the pupil shall be advised of the reason for the proposed suspension." *Id.* I strongly suspect that the drafters of § 120.13(1)(b), STATS., had read *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), where the Court held that a conference with a school teacher prior to discharge satisfied the requirements of procedural due process, provided the teacher had notice and an opportunity to be heard within a reasonable time after his or her discharge or suspension. Section 120.13(1)(b) further provides that the suspended pupil or the pupil's parent or guardian may, within five school days following the commencement of the suspension, request a conference with the school district administrator or his or her designee who shall

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be someone other than an official in the pupil's school. The school district administrator or his or her designee may make a finding within fifteen days of the conference that the suspension was unjustified, whereupon reference to the suspension in the pupil's school records "shall be expunged." *Id.* Whether these latter procedures satisfy procedural due process is not an issue in this case.

Although the fifteen-day period of suspension is triggered by notice of proposed expulsion, that notice has nothing to do with the expulsion proceedings. Section 120.13(1)(e)2, STATS., provides in part: "[T]he independent hearing officer or independent hearing panel . . . may expel a pupil from school whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c)." The district must give five days' notice of the charges against the pupil and the time and place of the hearing. Subdivision 2 does not require that the hearing on the charges be held within any particular time, although due process requires that any disciplinary charges be heard within a reasonable time. The statute does not mention the fifteen-day suspension.

I agree with the state superintendent that § 120.13(1)(b), STATS., does not permit the school district administrator or his or her designee to suspend a pupil for more than fifteen consecutive school days. However, it is not up to the state superintendent to correct the administrator's or designee's error. That is up to the courts.

There is nothing in the statute which permits the state superintendent to review the school board's fifteen-day suspension under § 120.13(1)(b), STATS. Lenny was not denied procedural due process by the procedures prescribed in § 120.13(1)(e)2. He and his

parents got notice of the proposed grounds for expulsion, got written notice of the hearing, were heard by the hearing officer, got notice of the reasons for his expulsion, got review by the school board of his expulsion and appeals to the state superintendent and the circuit court. I do not see how failure of the school board to hold the expulsion hearing within fifteen days of the expulsion notice violated Lenny's procedural due process rights or failed to follow the statutory procedure.

While I agree with the state superintendent's conclusion that homebound instruction may not be imposed as discipline, I find nothing in the applicable statutes to preclude a district from suspending a pupil and then providing homebound instruction to that pupil so that his or her educational needs continue to be met when it is necessary to remove a pupil from the general population for whatever reason. However, I do not believe that issue is involved in this case because the state superintendent has no statutory authority to interfere with the local school district's decision as to when to use the homebound instruction program.

For these reasons, I concur in our decision affirming the decision of the circuit court reversing the state superintendent's action. However, I do not join the majority's opinion.²

²The majority would not reach the "issue" I advance to support the trial court's decision, on the grounds that this "issue" has not been raised. The difference between an "argument" and an "issue" is not often appreciated. See *State v. Weber*, 164 Wis. 2d 788, 789 & n.2, 476 N.W.2d 867, 868 (1991). "Once a case is before the court, the court may, within its discretion, 'review any substantial and compelling issue which the case presents.'" *Id.* at 795 n.6, 476 N.W.2d at 870 (Abrahamson, J., dissenting) (quoting *Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 32, 435 N.W.2d 234, 238 (1989)). If we do not

retain our independence to decide cases based on the law, we become arbitrators, not judges. The issue of the nature of the fifteen-day suspension is, in my opinion, a far more compelling issue than that decided by the majority. I believe we should follow our customary practice when a dispositive argument has not been noted by the parties; we should request supplemental briefs.

This appeal illustrates the value of a separate opinion in an intermediate appellate court. This case is likely to reach the Wisconsin Supreme Court and the court should have the benefit of a concurring judge's view of the law. The Chicago Council of Lawyers recently evaluated the United States Court of Appeals for the Seventh Circuit. See Chicago Council of Lawyers, *Evaluation of the United States Court of Appeals for the Seventh Circuit* (1994). The Council stated: "The Council believes . . . that separate opinions serve a real purpose." *Id.* at 11. The most persistent criticism of the Seventh Circuit judges was that they did not write separately enough. When addressing the Supreme Court Historical Society June 13, 1994, Justice Scalia stated: "A second external consequence of a concurring or dissenting opinion is that it can help to change the law. That effect is most common in the decisions of intermediate appellate tribunals." *Justice Scalia Delivers Nineteenth Annual Lecture: Discusses Dissenting and Concurring Opinions in Court History*, THE SUPREME COURT HISTORICAL SOCIETY QUARTERLY, vol. XV, at 19. The Council observed that: "There is relatively little scholarly literature on the virtues and vices of separate opinions, and most of it focuses on the U.S. Supreme Court." Chicago Council of Lawyers at 11 n.11. I have recently completed a survey of the chief judges of all state intermediate appellate courts to provide such literature.

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2005AP875
STATE OF WISCONSIN**

Cir. Ct. No. 2004CV3568

**IN COURT OF APPEALS
DISTRICT IV**

MADISON METROPOLITAN SCHOOL DISTRICT,

PETITIONER-APPELLANT,

JOSHUA S.,

PETITIONER,

v.

**ELIZABETH BURMASTER, STATE SUPERINTENDENT OF PUBLIC
INSTRUCTION,**

RESPONDENT-RESPONDENT.

**APPEAL from an order of the circuit court for Dane County:
MORIA KRUEGER, Judge. *Affirmed.***

Before Dykman, Vergeront and Deininger, JJ.

¶1 VERGERONT, J. Madison Metropolitan School District challenges the decision of the Wisconsin Superintendent of the Department of Public Instruction reversing the District's decision to expel a pupil, Joshua S. The Superintendent concluded that the District did not have the statutory authority to expel Joshua after the hearing officer appointed pursuant to WIS. STAT. § 120.13(1)(e)¹ to hear expulsion cases decided not to order expulsion. The circuit court affirmed the Superintendent's decision and the District appeals.

¶2 We conclude that the only reasonable construction of WIS. STAT. § 120.13(1)(e)3. is that, if a school district elects to have a hearing officer conduct an expulsion hearing, the District must comply with the procedures specified in that paragraph. Because para. (e)3. provides for review by the board of a hearing officer's decision only if the officer has ordered expulsion, the board did not have the authority to review and reverse the hearing officer's decision not to order Joshua's expulsion. We therefore affirm the circuit court order affirming the Superintendent's decision.

BACKGROUND

I. Summary of WIS. STAT. § 120.13(1), "SCHOOL GOVERNMENT RULES; SUSPENSIONS; EXPULSION"

¶3 Because the statutory framework regarding pupil expulsion is fundamental to understanding the procedural history of this case, we begin there. WISCONSIN STAT. § 120.13(1) requires school boards to adopt codes of conduct meeting certain standards. Section 120.13(1)(c)1.-2. authorizes a school board to

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

expel a pupil when it finds the pupil's conduct has met specified criteria.² Section 120.13(c)3. provides that "[p]rior to expelling a pupil, the school board shall hold a hearing," and the remainder of subds. 3. and 4. specify the procedure to be followed for that hearing, as well as the procedure for appealing the board's

² WISCONSIN STAT. § 120.13(1)(c)1.-2. provides:

(1) SCHOOL GOVERNMENT RULES; SUSPENSION;
EXPULSION.

....

(c) 1. The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed 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, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion. In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

2. In addition to the grounds for expulsion under subd. 1., the school board may expel from school a pupil who is at least 16 years old if the school board finds that the pupil repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not constitute grounds for expulsion under subd. 1., and is satisfied that the interest of the school demands the pupil's expulsion.

decision to the Department of Public Instruction and appealing the department's decision to the circuit court.³

³ WISCONSIN STAT. § 120.13(1)(c)3.-4. provides:

3. Prior to expelling a pupil, the school board shall hold a hearing. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel. The school board shall keep written minutes of the hearing. Upon the ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located.

4. Not less than 5 days' written notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

- a. The specific grounds, under subd. 1., 2. or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.
- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.

(continued)

¶4 WISCONSIN STAT. § 120.13(1)(e)1. provides that a school board may by resolution and on certain conditions authorize either an independent hearing panel or an independent hearing officer “to determine pupil expulsion ... instead of using the procedure under par. (c)3.” Section 120.13(1)(e)3. prescribes the requirements for a hearing before the officer or panel in language substantially the same as that required for a hearing before the board under § 120.13(1)(c)3. and then provides:

e. That the pupil and, if the pupil is a minor, the pupil’s parent or guardian may be represented at the hearing by counsel.

f. That the school board shall keep written minutes of the hearing.

g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil’s parent or guardian.

h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil’s parent or guardian may appeal the school board’s decision to the department.

i. That if the school board’s decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.

j. That the decision of the school board shall be enforced while the department reviews the school board’s decision.

k. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.

L. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13 (1).

Upon the ordering by the hearing officer or panel of the expulsion of a pupil, the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, the pupil's parent or guardian. Within 30 days after the date on which the order is issued, the school board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the hearing officer or panel shall be enforced while the school board reviews the order. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision...

¶5 Additional procedures for the hearing before the officer or panel and for appeals are set forth in WIS. STAT. § 120.13(1)(e)4. and essentially track those for hearings before the board as set forth in § 120.13(1)(c)4., with these additions and modifications relevant to this appeal:

4. Not less than 5 days' written notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

....

g. That if the hearing officer or panel orders the expulsion of the pupil the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

h. That within 30 days of the issuance of an expulsion order the school board shall review the order and shall, upon review, approve, reverse or modify the order.

i. That, if the pupil is expelled by the hearing officer or panel, the order of the hearing officer or panel shall be enforced while the school board reviews the order.

....

II. Factual and Procedural Background

¶6 Joshua, a sixth grader, was charged by the District with violating district policy by possessing an object that might be used as a weapon—a pencil—and by using it to stab a fellow pupil in the arm on school property. After a hearing on the charges took place before a hearing officer, the officer concluded that Joshua had violated district policy by stabbing another pupil with a pencil, but that the interest of the school did not require Joshua's expulsion. The officer's decision stated that Joshua was a young sixth grader who was an honor pupil, was remorseful about what happened, had no prior infractions, had not been disciplined before and said he would continue in counseling. Also, several professionals testified that he posed no future risk to the school community. The five-day suspension that Joshua had already received, the officer concluded, was adequate punishment in light of these factors. The officer entered an order that Joshua not be expelled.

¶7 The district board of education reviewed the hearing officer's decision.⁴ Joshua was invited to submit written comments to the board but was not invited to attend the closed executive session. In addition to the hearing officer's decision and documentation, the board had before it a memorandum from the district administrator to the board setting forth the administration's position that the board should order expulsion despite the hearing officer's decision. Joshua was not given a copy of this memorandum prior to the board's review and decision. The board reversed the hearing officer's decision and ordered that,

⁴ The procedural facts of what took place before the board are taken from the decision of the Superintendent and there is no dispute over them.

effective on that date, May 17, 2004, Joshua be expelled until the beginning of the second semester of the 2004-05 academic year, with provisions for earlier admittance to an alternative or regular educational program on certain conditions.

¶8 Joshua appealed the board's decision to the Superintendent. The Superintendent concluded that three procedural errors required reversal of the expulsion order. First, the board had not adopted a resolution as required by WIS. STAT. § 120.13(1)(e) if a board uses an independent hearing officer to hear expulsion cases rather than itself hearing the cases under § 120.13(1)(c)3. Second, the Superintendent ruled, the board did not have the statutory authority to review the decision of the hearing officer because § 120.13(1)(e)3. permitted a school board that has appointed an independent hearing officer to review only orders expelling a pupil. Third, the Superintendent determined that the board meeting was more than a review because the board considered the additional information of the district administrator's memorandum, and this violated paras. (e)3. and (c)3., which together provide for a hearing before either an independent hearing officer or the board, but not both. The Superintendent rejected the board's argument that under WIS. STAT. §§ 120.13 (intro), 120.12, and 118.001, the board's "plenary powers" included the authority to review the hearing officer's decision.⁵

⁵ The Superintendent also pointed out that the board had not adopted the "plenary powers" that "may" grant the board the authority to modify the specific statutorily required procedures for expulsion. In a footnote the Superintendent stated that this statement was not intended to convey that the board could avoid those statutory requirements by adopting "plenary powers" under WIS. STAT. § 120.13 (intro.). The District argues in a footnote that neither *Pritchard v. Madison Metropolitan School District*, 2001 WI App 62, ¶14, 242 Wis. 2d 301, 625 N.W.2d 613 nor WIS. STAT. § 118.001 mention any need to specifically adopt "plenary powers." The Superintendent does not respond to this argument and does not refer to the board's failure to adopt "plenary powers" as a reason to affirm the Superintendent's decision. Therefore, we do not address this issue.

(continued)

¶9 The District petitioned the circuit court for review of the Superintendent's decision and the circuit court affirmed. The circuit court concluded that under the plain language of WIS. STAT. § 120.13(1)(e)3, the board did not have the authority to review the decision of the hearing officer.

ANALYSIS

¶10 The District argues on appeal, as it did before the Superintendent and in the circuit court, that WIS. STAT. § 120.13(1)(e) does not prohibit the board from reviewing and reversing the hearing officer's decision and that it has this authority under the language of WIS. STAT. § 120.12(1) in view of the expanded powers given the school board under WIS. STAT. § 118.001 and, independently, under the introductory language of § 120.13.

¶11 We review the decision of the Superintendent, not that of the circuit court, and our standard of review is the same as that of the circuit court. See *Target Stores v. LIRC*, 217 Wis. 2d 1, 11, 576 N.W.2d 545 (Ct. App. 1998). The issue presented is one of statutory construction, which is a question of law. *Kannenbergh v. LIRC*, 213 Wis. 2d 373, 384, 571 N.W.2d 165 (Ct. App. 1997). Although courts are not bound by an agency's construction of a statute, we may give varying degrees of deference to the agency's construction in certain situations. *Id.* at 384-85.

The Superintendent took up two additional issues, which, it concluded, did not require reversal. First, the Superintendent criticized the board's procedure of considering the administrator's memorandum without first providing it to Joshua, but decided that this was not a violation of his right to due process because the memorandum contained no new information. Second, the Superintendent rejected Joshua's argument that the board did not consider his argument that he was acting in self-defense.

¶12 The parties dispute whether we should defer to the agency, and, if so, how much. The Superintendent argues that we should accord its construction of the board's statutory authority great weight, while the board argues we should accord it no deference and review de novo the issue of the proper construction of the statutes. We conclude that it is unnecessary to resolve this dispute because, even if we review the issue de novo, our conclusion is that the Superintendent's construction was correct, though we employ a somewhat different analysis.

¶13 When we construe a statute, we begin with the language of the statute and give it its common, ordinary, and accepted meaning, except that technical or specially defined words are given their technical or special definitions. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language in the context in which it is used, not in isolation but as part of a whole, in relation to the language of surrounding or closely related statutes, and we interpret it reasonably to avoid absurd or unreasonable results. *Id.*, ¶46. We also consider the scope, context, and purpose of the statute insofar as they are ascertainable from the text and structure of the statute itself. *Id.*, ¶48. If, employing these principles, the meaning of the statute is plain, then we apply that language to the facts at hand. *Id.*, ¶¶45-50.

¶14 In this case, we begin with the language of WIS. STAT. § 120.13(1)(e)3., which specifies the procedure to be used when a school board elects to use a hearing officer to conduct the hearing required under § 120.13(1)(c) rather than conducting the hearing itself.⁶ After describing requirements for the

⁶ The Superintendent is not arguing on appeal that reversal of the board's order to expel is required because the District did not adopt a resolution, as required by WIS. STAT. § 120.13(1)(e)1., authorizing a hearing officer to conduct the hearing. Therefore, we do not address this issue.

hearing, this subdivision states: "Upon the ordering by the hearing officer or panel of the expulsion of a pupil, the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, to the pupil's parent or guardian." Section 120.13(1)(e)3. This notice is plainly required only when the officer orders expulsion. The next sentence, which describes the school board's authority, plainly refers only to an order to expel: "Within 30 days after the date on which the order is issued, the school board *shall review the expulsion order* and shall, upon review, approve, reverse or modify the order." *Id.* (emphasis added). The next sentence is consistent with the board's review of only expulsion orders: "The order of the hearing officer ... shall be enforced while the school board reviews the order." *Id.* If the officer had not ordered expulsion, there would be nothing to enforce. We conclude the plain language of § 120.13(1)(e)3. provides for a review by the school board only when the hearing officer orders expulsion.

¶15 The District argues that WIS. STAT. § 120.13(1)(e)3. requires review by the school board only when the hearing officer orders an expulsion and is silent on review by the board when the hearing officer does not order an expulsion. According to the District, mandating review for expulsion orders does not prohibit review of decisions not to expel, and nothing in § 120.13(1)(e) or (c) prohibits this. The District asserts that it is therefore proper to look at other statutes that describe the duties and powers of school boards in broad language, and these, in the District's view, do authorize school boards to review hearing officers' decisions not to expel, even though there is no mention of this in § 120.13(1)(e).

¶16 The District first directs our attention to WIS. STAT. § 120.12(1), which provides that a school board shall:

(1)[s]ubject to the authority vested in the annual meeting and to the authority and possession specifically

given to other school district officers, have the possession, care, control and management of the property and affairs of the school district, except for property of the school district used for public library purposes under s. 43.52.

The District contends that the phrase "care, control, and management of the property and affairs of the school district" encompasses review of a hearing officer's decision not to expel a pupil. The District first acknowledges that case law has in the past construed the statutory authority of school boards under the enumerated powers doctrine, whereby the powers were limited to those expressly conferred by statute or necessarily implied. *See, e.g., Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). However, the District continues, the legislature plainly adopted a different approach in WIS. STAT. § 118.001. Section 118.001 was enacted by 1995 Wis. Act 27 § 3931, which provides:

SECTION 3931. 118.001 of the statutes is created to read:

118.001 Duties and powers of school boards; construction of statutes. The statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state.

According to the District, when § 120.12(1) is read in light of § 118.01, the former must be read to include the authority of the school board to review a hearing officer's decision not to expel a pupil, even though it is not expressly referred to in WIS. STAT. § 120.13(1)(e)3.

¶17 The District also relies on the introductory language to WIS. STAT. § 120.13, which is titled "School board powers":

The school board of a common or union high school district may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils, and including all of the following[.]

This language was added to § 120.13 by 1995 Wis. Act 27, § 4024, after § 120.13(1)(e) was enacted. The District describes this language as an “independent delegation of statutory authority” that makes all the provisions in § 120.13(1)-(35) illustrations of a school board’s authority rather than an exhaustive list. Thus, asserts the District, a school board has the authority to review hearing officers’ decisions not to expel a pupil even though that is not mentioned in § 120.13(1)(e)3. because that statutory provision is illustrative only and such a reviewing role is “reasonable to promote the cause of education.” Section 120.13 (intro).

¶18 We agree with the District that the enactment of WIS. STAT. §§ 118.001 and 120.13 (intro) expresses the legislature’s intent to give school boards broader powers and wide discretion in exercising those powers. *Pritchard v. Madison Metro. Sch. Dist.*, 2001 WI App 62, ¶14, 242 Wis. 2d 301, 625 N.W.2d 613. However, we do not agree that those statutes mean that, where the legislature had previously authorized the board to take particular actions using specified procedures, as it did in § 120.13(1)(e)3., the board now has the authority to follow other procedures in taking those particular actions.

¶19 WISCONSIN STAT. § 120.13(1)(c) and (e) give the school board the authority to expel a pupil when specific substantive standards are met and specific procedures have been followed. Part of the specified procedure is that, if the school board adopts a resolution allowing a hearing officer to conduct a hearing, the school board reviews all orders to expel a pupil. Section 120.13(1)(e)3. The

manner of giving notice to the pupil about this procedure—and about the school board’s authority to review and reverse, modify or affirm the officer’s decision—is carefully spelled out. *See* § 120.13(1)4.g.-i. The legislature’s “silence” on school board review of a hearing officer’s decision not to expel cannot be reasonably understood to mean that such review is optional, because there are no concomitant procedural safeguards for the pupil in that situation. For example, there is a time limit for the school board’s review of the expulsion order, but that does not, by the plain language, apply to the board’s review of a decision not to expel. Section 120.13(1)(e)3. There is a requirement of notice to a pupil that the board will review an expulsion order and either approve, reverse or modify the order, § 120.13(1)4.h., but there is no requirement of notice to a pupil that the school board will also review a decision not to expel and may reverse that. A primary purpose of the procedures specified in § 120.13(1)(e)3. and 4., evident from the text, is to provide safeguards for a pupil against whom a school district initiates expulsion proceedings. The legislature could not have intended to afford procedural protections to pupils for school board review of an unfavorable decision but leave it up to each school board to decide on the procedure if a board chooses to review decisions favorable to the pupil.

¶20 The logic of the District’s decision makes much of WIS. STAT. § 120.13(1) meaningless. For example, para. (c)1. provides that the “school board may expel a pupil from school whenever it finds” that the pupil’s conduct meets certain criteria. *See* footnote 2. However, adopting the District’s position would mean that this is simply illustrative of reasons the school board may expel a pupil and the board is free to suspend pupils for other reasons. This is not a reasonable reading of § 120.13(1), and it is not required by the introductory language of § 120.13. Rather, the introductory language, when read in the context of the rest

of § 120.13, can only reasonably mean that, while school boards have powers beyond those enumerated in subsecs. (1)-(37), they do not have the power to violate the provisions of subsecs. (1)-(37). Given the specificity with which the legislature has expressed the substantive and procedural requirements for expelling a pupil in § 120.13(1)(c)-(g), the only reasonable reading of those subsections is that the legislature intended to prohibit expulsions that did not conform with the statutory requirements. Thus, the introductory language of § 120.13 does not give boards the power to expel a pupil using other standards or procedures.

¶21 For much the same reason, the board's powers of "care, control, and management of the property and affairs of the school district" found in WIS. STAT. § 120.12(1), even when considered in light of the principles of broad statutory construction in WIS. STAT. § 118.001, cannot reasonably be read to permit a school board to expel a pupil using standards or procedures other than those specified in WIS. STAT. § 120.13(1)(c)-(g).

¶22 The District argues that our decision in *Pritchard*, 242 Wis. 2d 301, supports its position, but we do not agree. The statute that was challenged unsuccessfully in *Pritchard* as a limitation on the District's authority is not analogous to WIS. STAT. § 120.13(1)(c)-(g). That statute, WIS. STAT. § 66.185 (1997-98), was amended by 1959 Wis. Laws, ch. 179, to give municipalities, which includes school districts, the authority to provide health insurance benefits to the spouses and dependant children of their employees and officers. *Id.*, ¶¶9, 14. We concluded § 66.185 does not prohibit the District from providing health insurance benefits to other persons, if that authority is granted by other statutes. *Id.*, ¶10. We further concluded that the powers granted the District under WIS. STAT. § 120.13 (intro) and other provisions in ch. 120, broadly construed as

mandated by WIS. STAT. § 118.001, include the power to provide health insurance benefits to designated family partners of employees. *Id.*, ¶¶15-16. In contrast to our construction of § 66.185, here we have concluded that § 120.13(1)(c)-(g) plainly expresses the legislature's intent that a school board may expel a pupil only if it applies the standards and procedures specified in those subdivisions.

¶23 In summary, we conclude that the only reasonable construction of WIS. STAT. § 120.13(1)(e)3. is that, if a school district elects to have a hearing officer conduct an expulsion hearing, the District must comply with the procedures specified in that paragraph. The broad grant of powers given school boards in WIS. STAT. §§ 120.12(1) and 120.13 (intro), even when liberally construed as mandated by WIS. STAT. § 118.001, cannot, when read together with § 120.13(1)(c)-(g), be reasonably read to give school boards the authority to expel a pupil using standards or procedures that do not meet the requirements of § 120.13(1)(c)-(g). Because para. (e)3. provides for review by the board of a hearing officer's decision only if the officer has ordered expulsion, the board here did not have the authority to review and reverse the hearing officer's decision not to order Joshua's expulsion.

By the Court.—Order affirmed.

Recommended for publication in the official reports.

Chapter I- Authority to Expel

H. Effect of Board's Failure to Comply with Statutory Requirements

Failure to comply with a mandatory ("shall") statute renders the proceeding void, while non compliance with a directory ("may") provision does not invalidate the proceeding (citing Muskego-Norway Consolidated School J.S.D. No. 9 v. W.E.R.B., 32 Wis. 2d 478, 145 N.W.2d 680 [1967]).

Michael S. by the Milwaukee Pub. School Bd.,
(128) May 10, 1985 (p. 5)

The notice requirements set out in sec. 120.13(1)(c), Stats., are mandatory in nature. A school district's failure to send a written notice of an expulsion hearing to a student individually not less than five days before the hearing renders an expulsion decision void.

Michelle R. by the Suring Public School Dist.,
(126) March 7, 1985 (pp. 4-7)

Nancy Z. by the Janesville School Dist., (139)
May 23, 1986 (p. 9)

See also decision numbered 560.

But, if (1) the parent, at the board's request, waived the mandatory five-day notice, (2) the hearing, due to the board's postponement, then occurred after five days notice, and (3) the pupil and parents appeared at the postponed hearing, an exception may be made. Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (pp. 5-6).

The notice requirements set out in sec. 120.13(1)(c), Stats., are mandatory in nature. A school district's failure to send a written notice of an expulsion hearing or a copy of the expulsion decision to a student individually renders the expulsion decision void.

Michael S. by the Milwaukee Public School Board, (128) May 10, 1985 (p. 8)

Isaac S., II by the Milwaukee School Dist.,
(187) Apr. 21, 1992 (pp. 8-9)

See also decisions numbered 197 and 230.

But see: Jesse F. by the Stanley-Boyd School Dist., (189) April 21, 1992 (p. 4) (at meeting with student and parents, district administrator personally

Chapter I- Authority to Expel

gave each a copy of the expulsion order); Brian V. by the Shorewood School Dist., (195) June 8, 1992 (p. 4) (with mother's permission, student's sister picked up two copies of the expulsion order at the superintendent's office).

A school board must mail a copy of an expulsion order to any student expelled. The SPI must reverse any expulsion order in which the record does not disclose evidence that the student was mailed a copy of such an order as a failure to comply with the procedural mandates of sec. 120.13(1)(c), Stats.

James by the Hortonville School Dist., (118)
March 28, 1984 (p. 4)

David by the Hortonville School Dist., (119)
March 28, 1984 (p. 4)

But see: Jesse F. by the Stanley-Boyd School Dist., (189) April 21, 1992 (p. 4) (order personally given to pupil); Brian V. by the Shorewood School Dist., (195) June 8, 1992 (p. 4) (pupil's sister picked up order at school office).

I. Jurisdiction — Expulsion for Conduct While a Student at Another School District

One school district may expel a student for conduct committed while the student was a resident and a student of a different school district if, and only if, the conduct involved constitutes possession of a firearm within the meaning of Sec. 120.13(1)(c)(2m), Stats. and the previous district did not commence expulsion proceedings.

Alexander P. by the Oak Creek Franklin School Dist. Board of Education (372) November 23, 1998

Chapter II - Suspensions

II. Suspensions

A. Stats.

Section 120.13(1)(b) states as follows:

(b) The school district administrator or any principal or teacher designated by the school district administrator also may make rules, with the consent of the school board, and may suspend a pupil for not more than 5 school days or, if a notice of expulsion hearing has been sent under par. (c)4 or (e)4 or s. 119.25, for not more than a total of 15 consecutive school days for non-compliance with such rules or school board rules, or for 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, or for conduct by the pupil while at school or while under the supervision of a school authority which endangers the property, health or safety of others, or for conduct while not at school or while not under the supervision of a school authority which endangers the property, health or safety of others at school or under the supervision of a school authority or endangers the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled. In this paragraph, conduct that endangers a person or property includes making a threat to damage property. Prior to any suspension, the pupil shall be advised of the reason for the proposed suspension. The pupil may be suspended if it is determined that the pupil is guilty of noncompliance with such rule, or of the conduct charge, and that the pupil's suspension is reasonably justified. The parent or guardian of a suspended minor pupil shall be given prompt notice of the suspension and the reason for the suspension. The suspended pupil or the pupil's parent or guardian may, within 5 school days following the commencement of the suspension,

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have a conference with the school district administrator or his or her designee who shall be someone other than a principal, administrator or teacher in the suspended pupil's school. If the school district administrator or his or her designee finds that the pupil was suspended unfairly or unjustly, or that the suspension was inappropriate, given the nature of the alleged offense, or that the pupil suffered undue consequences, or penalties as a result of the suspension, reference to the suspension on the pupil's school record shall be expunged. Such finding shall be made within 15 days of the conference. A pupil suspended under this paragraph shall not be denied the opportunity to take any quarterly, semester or grading period examinations or to complete course work missed during the suspension period, as provided in the attendance policy established under s. 118.16(4)(a).

There is no requirement that an expulsion hearing be given within 15 days of suspension.

Madison Metropolitan School Dist. v. Lee Sherman Dreyfus, 93-CV-2413 (1993) (p. 6)

Student, by his attorney, may waive right to have expulsion hearing within fifteen (15) days.

Adam S. by the East Troy Community School Dist., (304) Nov. 25, 1996 (p. 4)

A violation of suspension procedure alone does not necessarily invalidate an otherwise valid expulsion.

Madison Metropolitan School Dist. v. Lee Sherman Dreyfus, 93-CV-2413 (1993) (p. 6)

Statute does not allow ten-day suspension period prior to sending notice of expulsion hearing. But SPI has no authority to review a suspension under sec. 120.13(1)(b), Stats. See Chapter II, A.

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Michael Ryan H. by the Clinton Community School Dist., (222) Mar. 10, 1994 (p. 4)

NOTE: Section 118.15 (1) (d) approves of homebound study as a curriculum modification alternative to in-school study. Homebound study, therefore, does not constitute suspension within the meaning of Section 120.13 (1) (b).

B. Superintendent of Public Instruction Has No Authority to Review Suspensions

The SPI has no authority to review suspensions imposed under sec. 120.13(1)(b), Stats., and therefore lacks the jurisdiction to address the issue of whether a school board violated a student-appellant's rights under that statute by suspending him for a three-day period followed consecutively by a longer period in anticipation of expulsion.

Jesse K. by the School Bd. of Joint Dist. No. 2, (131) June 17, 1985 (pp. 6-7)

Nancy Z. by the Janesville School Dist., (139) May 23, 1986 (pp. 6-7)

See also decisions numbered 199, 216, 222, 341, 359, 360, 461, 498, 508, 530 and 628.

SPI lacks authority to review a suspension under sec. 120.13(1)(b), Stats.

Michael Ryan H. by the Clinton Community School Dist., (222) Mar. 9, 1994 (p. 5)

See also decisions numbered 341, 359, 360, 408, 461, 530 and 616.

The superintendent's scope of review for expulsions is limited to subsection (c) of section 120.13 (1). Suspensions are not reviewable within the context of an expulsion appeal.

Madison Metropolitan School District vs. Lee Sherman Dreyfus, 199 Wis. 2d, 543 N.W.2d 843 (Ct. App. 1995), Lenny R. G. by the Madison Metropolitan School District Board of Education

Chapter II - Suspensions

See also decisions numbered 331, 359, 360, 461 and 530.

The state superintendent lacks jurisdiction to review suspensions. The state superintendent's jurisdiction for review only covers the expulsion proceedings, which commence with the expulsion hearing notice.

Athena S. by the School Dist. of Omro, (431)
April 17, 2001 (p. 3)

Chelsea N. by the Appleton Area School Dist.,
(530) January 28, 2005 (p. 4)

The state superintendent lacks authority to review the term of the pupil's suspension.

Madison Metropolitan School District (Lenny G.) vs. Wis. D.P.I. 199 Wis. 2d 1, 543 N.W. 2d 843 (1995)

B. R. by the Hamilton School Dist., (555)
August 5, 2005

B. S. by the New London School Dist., (578)
July 27, 2006

See also decision number 656.

C. Successive Suspensions

A student's statutory rights under sec. 120.13(1)(c), Stats., are not violated when that student is given a three-day suspension followed by a twelve-day suspension in contemplation of expulsion, thereby resulting in the student's suspension for thirteen consecutive days, where on day one of the first suspension the school imposed the second suspension for misconduct subsequent to the first violation and for which the school sought expulsion.

Tom C. by the School Dist. of Lake Holcombe,
(115) Oct. 18, 1983 (p. 3)

Once a school board has held an expulsion hearing and has found grounds for the expulsion, the board cannot retroactively order a longer suspension in lieu of an expulsion.

Chapter II - Suspensions

Leslie F. by the Milwaukee Pub. Schools, (136)
Mar. 3, 1986 (p. 11)

D. Effect on Course Credit

Sec. 118.16(4)(a) and (b) Wis. Stats. states as follows:

(4)(a) The school board shall establish a written attendance policy specifying the reasons for which pupils may be permitted to be absent from a public school under s. 118.15 and shall require the teachers employed in the school district to submit to the school attendance officer daily attendance reports on all pupils under their charge.

(4)(b) No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The attendance policy under par. (a) shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension.

Chapter III – Prehearing Procedures

III. Prehearing Procedures

A. Notice

Section 120.13(1)(c)4. states in part:

4. Not less than 5 days' written notice of the hearing under subd. 3 shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

a. The specific grounds, under subd. 1., 2., or 2m, and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.

b. The time and place of the hearing

c. That the hearing may result in the pupil's expulsion.

d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.

e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.

f. That the school board shall keep written minutes of the hearing.

g. That if the school board orders the expulsion of a pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal to the department.

i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.

j. That the decision of the school board shall be enforced while the department reviews the decision.

Chapter III – Prehearing Procedures

k. That an appeal from the decision of the department may be taken within 30 days to the circuit court of the county in which the school is located.

l. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13(1).

Pupil expulsions are administrative proceedings and not subject to civil procedure found in Wisconsin Stat. Chapter 801-847.

B.J. by the Nicolet Union High School Dist.,
(647) July 17, 2009

A student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard, even where the student unequivocally admits to the conduct charged (citing *Keller v. Fochs*, 385 F. Supp. 262 [E.D. Wis. 1974])

Michaelene J. by the Washington Island School
Dist., (161) May 17, 1989 (p. 9)

Shane M. B. by the Green Bay Area Public
School Dist., (190) Apr. 21, 1992 (p. 5)

Joseph F. by the Almond-Bancroft School Dist.,
(191) May 13, 1992 (p. 5)

See also decisions numbered 197, 445, 468, 478, 481, 494, 509, 513, 514, 624, 642 and 656.

Failure to fully comply with the notice provisions of the statute is fatal error and renders an expulsion decision void.

Michelle R. by the Suring School Dist., (126)
Mar. 7, 1985 (p. 4)

See also decisions numbered 144, 166, 168, 171, 187, 190, 191, 197, 231, 204, 228, 325, 445, 459, 460, 465, 573 and 624.

Notice requirements of the statute are mandatory in nature and failure to comply with the statutory requirement renders the expulsion void.

Chapter III – Prehearing Procedures

Telsea M. by the East Troy Community School Dist. Bd. of Education, (408) February 24, 2000

Ryan G. by the Sparta Area School Dist. Bd. of Education, (325) May 19, 1997

Christopher K. by West Allis School Dist. Bd. of Education, (166) April 18, 1990

See also decisions numbered 143, 445, 460, 559, 560, 569 and 624.

Even where a pupil unequivocally admits misconduct that is grounds for expulsion, the failure to provide the mandated, advanced statutory notice calls for reversal.

Christopher K. by the West Allis School Dist., (166) Apr. 18, 1990

Travis V. by the Waterloo School Dist., (143) July 2, 1986

John K. by the Wisconsin Rapids School Dist., (178) 1991

Ryan G. by the Sparta Area School Dist., (325) May 19, 1997 (p. 7)

See also decisions numbered 445 and 507.

But see: Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (pp. 5-6); Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

The notice requirements in § 120.13(1)(c) are mandatory in nature and failure to comply with the statute requires reversal of the expulsion order, even if both the pupil and the parent appear at the expulsion hearing.

O. S. by the Racine Unified School Dist., (548) June 27, 2005 (p. 4)

S. S. by the West Allis School Dist., (559) Oct. 7, 2005 (p. 5)

Chapter III – Prehearing Procedures

S. P. by the Watertown School Dist., (560)
December 20, 2005

If there is to be a knowing and intelligent waiver of the pupil's and parents' statutory right to a prompt hearing and decision of the pupil's state constitutional right to attend school, i.e., an agreement to "a period of expulsion," presumably the district would have to demonstrate on the record that such waivers were knowingly and intelligently obtained from both the child and the parents.

Lenny R. G. by the Madison Metropolitan School Dist., (207) May 17, 1993 (p. 12)

Where important constitutional and statutory rights are being waived in a proceeding involving a governmental agency, the agency before whom the rights are being surrendered usually has the burden of demonstrating the validity of the waiver. See Ernst v. State, 43 Wis. 2d 661, 672, 170 N.W.2d 713 (1969).

Lenny R. G. by the Madison Metropolitan School Dist., (207) May 17, 1993 (p. 14)

While the school board must submit evidence that the notice of hearing was timely mailed when an expulsion is appealed to the state superintendent, there is no requirement that the school district provide specific proof of mailing at the expulsion hearing.

Jamie L. W. by the Hudson School Dist., (419)
June 15, 2000 (p. 4)

The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board.

John K. by the Wisconsin Rapids School Dist., (178) May 17, 1991

O. H. by the Milwaukee Public School Dist., (573) May 8, 2006

When adequate notice is given, failure to appear at the expulsion hearing does not require another expulsion hearing or another opportunity to provide an explanation for pupil's actions.

Chapter III – Prehearing Procedures

B. B. by the Milwaukee School Dist., (619) May 6, 2008

1. Time Requirements

Section 120.13(1)(c)4. states in part:

. . . Not less than 5 days' written notice of the hearing under subd. 3. shall be sent . . .

NOTE: The statute only requires that the notice "be sent." Presumably mailing of the notice is sufficient. It is far better practice, however, to serve the notice on the pupil (hand it to him or use a process server), and if the pupil is a minor, on his or her parent or guardian not less than 5 days before the hearing.

Many districts use a process server for this purpose. The process server's affidavit of service may then be made part of the record of the hearing.

There is no requirement that the school board use certified mail to send expulsion related correspondence.

Luke D. by the Durand School Dist.,
(483) Feb. 14, 2003

The five day notice of hearing to a student facing expulsion as required by sec. 120.13(1)(c), Stats., refers to calendar days, not school days.

"Sent" is not the same as received. Operative date is the date upon which notice was sent and not the date upon which it was received.

Derek D. by the Flambeau School Dist. Bd. of Education, (451) January 28, 2002

Daniel C. by Whitewater School Dist.
(503) Dec. 19, 2003

See also decision numbered 527.

Chapter III – Prehearing Procedures

The statute requires a hearing be held no less than five days after notice of the expulsion hearing is given.

Fredell F., by the Milwaukee Public School Dist., (365) July 2, 1998

If notice is sent expanding the grounds for expulsion, a new five day notice period is required.

S. P. by the Watertown School Dist., (560) December 20, 2005

N. P. by the Watertown School Dist., (569) March 13, 2006

With respect to the notice that a school board must provide a student of an impending expulsion hearing, sec. 120.13(1)(c), Stats., requires that (1) written notice of hearing must be sent at least five days before the hearing; and (2) the notice must be sent to the pupil and the pupil's parent or guardian if the pupil is a minor.

Travis V. by the Waterloo School Dist., (144) July 2, 1986 (p. 4)

A student's statutory rights under sec. 120.13(1)(c), Stats., are not violated when that student is given a three day suspension followed by a twelve day suspension in contemplation of expulsion, thereby resulting in the student's suspension for thirteen consecutive days, where on day one of the first suspension the school imposed the second suspension for misconduct subsequent to the first violation and for which the school sought expulsion.

Tom C. by the School Dist. of Lake Holcombe, (115) Oct. 18, 1983 (p. 3)

The notice requirements set out in sec. 120.13(1)(c), Stats., are mandatory in nature. A school district's failure to send a written notice of an expulsion hearing to a student individually not less than five days before the hearing renders an expulsion decision void.

Michelle R. by the Suring Public School Dist., (126) March 7, 1985 (pp. 4-7)

Nancy Z. by the Janesville School Dist., (139) May 23, 1986 (p. 9)

Chapter III – Prehearing Procedures

Shawn F. by the Slinger School Dist., (231)
June 9, 1994 (p. 4)

Mailing two copies of a notice addressed to parents in one envelope at least raises a serious question as to whether the statutory requisite of separate notice to the pupil was in fact met.

But, if (1) the parent, at the board's request, waived the mandatory five-day notice, (2) the hearing, due to the board's postponement, then occurred after five-days notice, and (3) the pupil and parents appeared at the postponed hearing, an exception may be made.

Christopher P. by the Shorewood School Dist.,
(192) May 18, 1992 (pp. 5-6)

Shawn F. by the Slinger School Dist., (231)
June 9, 1994 (p. 4)

In computing the time for notice of an expulsion hearing to a student, the date on which the notice was sent should be excluded from the count of days but the date of the hearing should be included. **DECISION RECONSIDERS AND CHANGES PRIOR DECISIONS IN Nancy Z. by the Janesville School Dist., (139), Travis V. by the Waterloo School Dist., (144).**

Brian C. by the Sheboygan Area School Dist.,
(158) September 9, 1988 (pp. 5-6)

NOTE: This decision changes the prior rule. The prior rule stated that in computing the time for notice of an expulsion hearing to a student, neither the date that the notice was mailed nor the date of the hearing was to be included.

Nancy Z. by the Janesville School Dist., (139)
May 23, 1986 (p. 8)

Travis V. by the Waterloo School Dist., (144)
July 2, 1986 (pp. 4- 6)

SPI will follow Section 990.001, Stats., in determining how to calculate the time necessary between the notice of hearing and conducting the hearing (five days), i.e. excluding the day on which it is sent and including the day of the hearing.

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Lori P. by the Cudahy School Dist., (169) May 21, 1990 (p. 5)

Michael Ryan H. by the Clinton Community School Dist., (222) Mar. 10, 1994 (p. 5)

Saturdays and Sundays should be included (counted) in the five days.

Lori P. by the Cudahy School Dist., (169) May 21, 1990 (p. 5)

See also decisions numbered 213, 214, 222, 332 and 527.

Courts addressing due process in school disciplinary hearings seem to agree that flexibility is required in applying due process. Even though a school board may meet the statutory requirement of five days notice, in particular situations involving exigent circumstances such notice may be insufficient to satisfy due process.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (pp. 11-13)

For the other view that five days may be excessive notice, see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 2).

Where a student's due process rights require additional notice beyond what is statutorily required by sec. 120.13(1)(c), Stats., a school board's argument that the student would have to be returned to the classroom during the additional time allowed is an insufficient reason to refuse to postpone the hearing.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 14)

See also Chapter III., B. - Delay, p. 115.

Parents and pupil may choose to waive time limit issues and proceed with the hearing.

Laura F. by the West Allis School Dist., (527) December 20, 2004

Pupil and parent may consent to rescheduling hearing date.

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J. G. by the Oshkosh Area School Dist. (574)
June 22, 2006

2. To Student and Parent or Guardian

Sec. 120.13(1)(c)4. states in part:

. . . notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian . . .

This requires that a notice be sent to the pupil and, if the pupil is a minor, a separate notice be sent to the pupil's parent or guardian.

Sec. 120.13(1)(c), Stats., requires that written notice of an impending expulsion hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

Michelle R. by the Suring Pub. School Dist.,
(126) Mar. 7, 1985 (p. 3)

Michael S. by the Milwaukee Public School Board, (128) May 10, 1985 (p. 3)

See also decisions numbered 506, 548, 559, 573 and 624.

Separate expulsion notices must be mailed to pupil and to parent.

Melissa R. by Westfield School Dist., (479)
Sept. 10, 2002

This is a statutory requirement.

A. T. by Waupun School Dist., (625) July 11,
2008

Notice must be sent to student and parent. Failure to comply with this requirement requires reversal even if both the student and parent appear at the expulsion hearing.

R. H. by the Webster School Dist., (624) June
13, 2008

Chapter III – Prehearing Procedures

When the pupil is 18 years of age or greater, the district is not required to notify the pupil's parents of the expulsion hearing.

J. S. by the South Milwaukee School Dist.,
(615) April 11, 2008

It is common knowledge among educators and parents that privacy is an important teenage right. In many households, the parent does not open the teenager's mail and the teenager does not open the parent's mail, thus, when two notices are placed in one envelope addressed to only to the parent or to the student, there is no assurance that the mandatory procedural requirements of sending separate notices have been met.

Ulysses R. by South Milwaukee School Dist.,
(509) April 19, 2004

See also decisions numbered 548 and 559.

The notice requirements set out in sec. 120.13(1)(c), Stats., are mandatory in nature. A school district's failure to send a written notice of an expulsion hearing or a copy of the expulsion decision to a student individually (even though the student's parents received timely notice) not less than five days before the hearing renders an expulsion decision void.

Michelle R. by the Suring Pub. School Dist.,
(126) Mar. 7, 1985 (pp. 4-7)

See also decisions numbered 128, 139, 166,
171, 175, 187, 197, 280, 288, 445, 465, 506
and 559.

But see: Christopher P. by the Shorewood School Dist., (192) May 18,
1992 (pp. 5-6).

With respect to the notice that a school board must provide a student of an impending expulsion hearing, sec. 120.13(1)(c), Stats., requires that (1) written notice of hearing must be sent at least five days before the hearing; and (2) the notice must be sent to the pupil and the pupil's parent or guardian if the pupil is a minor.

Travis V. by the Waterloo School Dist., (144)
July 2, 1986 (p. 4)

Notice rights, hearing rights, right to an attorney, etc. are independently and separately available to both the child and parents.

Chapter III – Prehearing Procedures

Lenny R. G. by the Madison Metropolitan School Dist., (207) May 17, 1993 (p. 14)

A single notice sent to the student and parent does not meet the requirement of statutory notice to the pupil.

Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 6)

But a single notice sent to the student and parents followed by hand delivery of the notice to the student appears to meet the statutory requirements.

Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (p. 2)

But see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 2), where the principal of the school sent a notice addressed to Christopher, his father and his mother. It is unclear whether only one notice was sent to all three. In its decision, SPI makes no mention of a failure to send separate notices.

"Sent" requires more than delivering to the student an unaddressed envelope intended for the parent.

John K. by the Wisconsin Rapids School Dist., (178) May 17, 1991 (pp. 7-8)

The district erred when it mailed two copies of the notice of expulsion hearing in one envelope addressed to the parent.

Raymond K. by the Phillips School Dist., (435) June- 25, 2001 (p. 6)

Ryan S. by Pewaukee School Dist., (445) Sept. 25, 2001

See also decisions numbered 548 and 559.

Mailing the student's copy of the notice of hearing to the father's work address does not comply with the statute.

Isaac S. by the Milwaukee Public School Dist., (187) April 21, 1991

Chapter III – Prehearing Procedures

Raymond K. by the Phillips School Dist., (435)
June 25, 2001

See also decisions numbered 439, 445 and 559.

Record must show reasonable diligence in serving the parents personally (and no doubt student as well) or sending the notice to them by mail. Absent such a showing, substitute service, on a student facing expulsion, of a blank envelope containing expulsion notice does not constitute acceptable service on parents.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991 (p. 8)

If the notice was mailed to the last known address, this is sufficient – even if it is ultimately determined to be the wrong address.

Jamie L. W. by the Hudson School Dist., (419)
June 15, 2000 (p. 4)

Evidence showed that the sheriff's deputy attempted to serve the pupil, but his mother refused to disclose the pupil's location, so he served the pupil's copy on his mother.

The statute (120.13(1)(c)4) does not specify how notice must be "sent." The notice can be "sent" by regular or certified mail and hand delivered. As long as this is done within the proper timeframe, there is compliance.

Kyle J. W. by the Viroqua School Dist., (413)
April 27, 2000 (p. 4)

To avoid the issue of whether a parent and pupil have actual notice of the hearing, it is usually recommended that if certified or registered mail is used, a regular first class letter be sent, separately, to both the pupil and the parent. As long as the record is clear that the letters were sent, separately to both the pupil and the parent in a timely fashion, this will comply with statutory requirements and it will increase the chance that the letters are actually received by the pupil and parents. This will enable participation at the hearing, which is the obvious goal of providing adequate notice.

S. S. by the West Allis School Dist., (559)
October 7, 2005 (p. 4 n.1)

Chapter III – Prehearing Procedures

Compliance with service of hearing notice procedure is required for jurisdiction in an expulsion hearing, even where parents have actual notice of the hearing.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991 (p. 8)

With regard to the procedural mandate of sec. 120.13(1)(c), Stats., requiring that notice of an expulsion be sent to a minor student's parent or guardian, such a guardian need not be a court appointed guardian in order to receive valid notice. Where the only information available to a school district indicates that a student is living, e.g., with his grandparents, it is reasonable for the school to presume the grandparents to be the student's guardians and notice to them will satisfy sec. 120.13(1)(c), Stats.

Nathan N. by the Hudson School Dist., (163)
June 5, 1989 (p. 7)

The district cannot guess who a pupil's parent is. It is reasonable for the district to rely upon its pupil record and registration information to determine the parent or guardian.

D. P. by the Burlington Area School Dist., (554)
July 29, 2005 (p. 4)

A foster parent may be considered a "guardian" under this section.

Randy H. by the Central/Westosha UHS
School Dist., (204) April 6, 1993 (p. 6)

There may be cases in which a county department of social services should be served with a notice of an expulsion hearing.

Randy H. by the Central/Westosha UHS
School Dist., (204) April 6, 1993 (p. 6)

Where a pupil lives with a foster parent(s) the school may send the notice of expulsion hearing and order to the foster parent rather than the parent.

Jaime B. by the Barron School Dist., (358) May
14, 1998

D. P. by the Burlington Area School Dist., (554)
July 29, 2005 (p. 4)

Chapter III – Prehearing Procedures

Where parent(s), social worker(s) and foster parent fail to notify school of current address of pupil (with foster parent), board's mailing of expulsion order to the last address known met statutory requirements of notice under this section.

Derek D. by the Flambeau School Dist. Bd. of Education, (451) Jan. 28, 2002

The parent or pupil cannot prevent an expulsion hearing from taking place by refusing to accept notice by refusing to accept certified mail.

Daniel C. by Whitewater School Dist., (503) Dec. 19, 2003

Pupil and parent may waive procedural notice error and proceed to hearing.

D. P. by the Burlington Area School Dist., (554) July 29, 2005

3. Content of Notice and Effect

a. Specific Grounds Under Statute

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

a. The specific grounds, under subd. 1., 2. or 2m. . . .

The notice of hearing must specify the statutory grounds which would support expulsion.

Philip C. by the Wausaukee School Dist., (280) Mar. 22, 1996 (p. 4)

Ryan G. by the Sparta Area School Dist., (325) May 19, 1997 (p. 7)

See also decisions numbered 408, 415, 416, 438, 439, 459, 460, 465, 478, 481, 494, 409, 513 and 514.

Chapter III – Prehearing Procedures

Section 120.13(1)(c)4 clearly requires a notice of the specific grounds for expulsion and the particulars of the alleged misconduct.

Joseph S. by Oconomowoc Area School Dist.,
(478) Sept. 4, 2002

Antone M. by Westfield School Dist., (481)
Dec. 16, 2002

See also decisions numbered 494, 509, 513,
514, 590 and 642.

If board does not notify student of the specific grounds under subd. 1, 2 or 2m that was violated, expulsion will be overturned.

Todd M. G. by the Wonewoc – Union Center
School Dist., (416) June 13, 2000

Where expulsion is sought on a specific statutory ground, that ground must be included in the notice of expulsion hearing and there must be evidence in the record to support it.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991

See also decisions numbered 214, 287, 325
and 329.

The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991

O. H. by the Milwaukee Public School Dist.,
(573) May 8, 2006

It is not necessary that all grounds alleged in the notice of hearing be proven. There need only be proof of one of the statutory grounds. Where board found two of three alleged grounds were proven, expulsion was proper.

Leo P. by the Whitewater School Dist., (351)
March 31, 1998

Chapter III – Prehearing Procedures

Matt L. by the Merrill Area Public School Dist.,
(381) May 19, 1999

See also decision numbered 537.

Because the school district is required to provide the pupil advance notice of the statutory grounds under which it intends to proceed, it cannot make its finding based upon different statutory ground for which the student did not receive notice.

Travis J. M by the Deerfield Community School
Dist., (423) Sep. 25, 2000 (p.7)

Board may not order expulsion based on repeated refusal to obey school rules when notice alleges misconduct endangering safety of others.

Randy H. by the Central Westosha UHS
School Dist., (204) Apr. 6, 1993 (p. 5)

Benjamin L. by the Maple School Dist., (214)
Dec. 29, 1993 (pp. 8- 9)

The board may not make its findings based upon a different statutory ground than that for which the student received notice.

Melissa R. by Westfield School Dist.,
(479) Sept. 10, 2002

Antone M. by Westfield Dist.
(481) Dec. 16, 2002

The notice of expulsion and the findings of fact and conclusion of law must be based on one common statutory ground. Otherwise the expulsion will be reversed.

Melissa R. by Westfield School Dist.,
(479) Sept. 10, 2002

Antone M. by Westfield Dist.
(481) Dec. 16, 2002

The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board.

Chapter III – Prehearing Procedures

Antone M. by Westfield Dist.
(481) Dec. 16, 2002

Statement in notice of expulsion that the use of illegal substances violated school policy did not negate or confuse original notice stating student endangered the property, health or safety of others.

Tiffany S. by Edgerton School Dist., (517) June
21, 2004 (p. 4)

Allegations of pupil discrimination under Wisconsin Statutes Section 118.13 are subject to the procedures and requirements contained in Sec. 118.13 and Sec. T19 of the Wisconsin Administrative Code. Presumably such allegations are not part of an expulsion appeal.

Andrew K. by Southern Door County School
Dist., (476) August 1, 2002

A notice of expulsion hearing must include an allegation that the interest of the school demands expulsion.

Justin B. by Central/Westosha High School
Dist., (494) May 8, 2003

b. Particulars of Conduct

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

. . . The particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.

It is well established that a student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard (citing Keller v. Fochs, 385 F. Supp. 262 [E.D. Wis. 1974]).

Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (pp. 3-4)

Christopher K. by the West Allis School Dist.,
(166) Apr. 18, 1990 (p. 4)

Chapter III – Prehearing Procedures

Bradley P. by the South Milwaukee School Dist., (201) Jan. 14, 1994 (p. 5)

See also decisions numbered 394, 396, 445, 459, 478, 509, 513, 514, 522, 534, 590 and 625.

Section 120.13(1)(c)4 clearly requires a notice of the specific grounds for expulsion and the particulars of the alleged misconduct.

Joseph S. by Oconomowoc Area School Dist., (478) Sept. 4, 2002

Antone M. by Westfield School Dist., (481) Dec. 16, 2002

See also decisions numbered 494, 509, 513, 514, 522, 534, 624 and 625.

A student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged (citing Keller v. Fochs, 385 F. Supp. 262 [E.D. Wis. 1974]).

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 9)

Shane M. B. by the Green Bay Area Public School Dist., (190) Apr. 21, 1992 (p. 5)

Joseph F. by the Almond-Bancroft School Dist., (191) May 13, 1992 (p. 5)

Bradley Scott P. by the Menasha Joint School Dist., (197) Aug. 21, 1992 (p. 4)

See also decisions numbered 394, 399, 445, 459, 478, 481, 494, 509, 513, 514, 522, 534, 624 and 625..

Where expulsion is sought on a specific statutory ground, that ground must be included in the notice of expulsion hearing and there must be evidence in the record to support it.

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Brent W. by the D.C. Everest Area School Dist., (287) Apr. 25, 1996 (p. 4)

The notice requirement in a due process proceeding is intended to insure that the parties are sufficiently apprised of the charges so as to be able to defend against them.

Michaelene J. by the Washington Island School Dist., (165) Aug. 1, 1989 (pp. 5-6)

Joshua S. by the D.C. Everest School Dist., (170) June 22, 1990 (pp. 6-7)

Jennifer P. by the Waukesha School Dist., (226) Apr. 18, 1994 (p. 5)

Use of a blanket or “one size fits all” description of the particulars may be inadequate. Student and parents must have notice of the particular misconduct to be considered.

Ryan C. K. by the Pewaukee School Dist. Bd. of Education, (439) July 24, 2001

Ryan S. by the Pewaukee School Dist., (445) Sept. 25, 2001

See also decisions numbered 509, 524 and 534.

Generalized statements of behavior, etc., do not meet statutory requirements.

Nicole R. by the Arcadia School Dist., (480) Nov. 20, 2002

Failure to specify “the particulars of the alleged refusal, neglect or conduct” renders the expulsion decision void.

Christopher K. by the West Allis School Dist., (166) Apr. 18, 1990 (pp. 5-6)

John K. by the Wisconsin Rapids School Dist., (178) May 17, 1991 (p. 10)

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See also decisions numbered 190, 191, 197, 204, 226, 285, 438, 439, 459 and 465.

Proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered.

Ryan C. K. by the Pewaukee School Dist., (439) July 24, 2001

Ryan S. by Pewaukee School Dist., (445) Sept. 25, 2001

Ulysses R. by the South Milwaukee School Dist., (509) April 19, 2004

See also decisions numbered 522, 524, 534, 555, 590, 606 and 625.

Particulars of misconduct requires items or details of information, not generalizations.

Eric Paul H. by Mishicot School Dist. Bd. of Education, (459) March 11, 2002

Joseph S. by Oconomowoc Area School Dist., (478) Sept. 14, 2002

Antone M. by Westfield School Dist., (481) Dec. 16, 2002

See also decisions numbered 494, 513, 522 and 534.

Student need not be given “explanation” of the evidence prior to hearing.

Timothy W. by the Greenfield School Dist., (315) March 21, 1997 (p. 5, 6)

E.D. by the Grafton School Dist., (642) April 21, 2009

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Proper notice must inform the pupil of the time frame during which both allegations of misconduct occurred, where the misconduct occurred and a description of the conduct to be considered.

Board may not consider allegations of misconduct if misconduct is not specified in notice of the expulsion hearing.

Paul K. by the Flambeau School Dist., (171)
July 22, 1990 (p. 6)

Joseph F. by the Almond-Bancroft School Dist., (191) May 13, 1992 (pp. 5-6) (also holding that when multiple grounds are ruled on, notice must fairly and specifically state the particular conduct supporting each ground).

See also decisions numbered 214, 325 and 507.

Where notice refers to misconduct on January 9 and involves misconduct on December 9, notice is insufficient and expulsion reversed.

Randy H. by the Central Westosha UHS School Dist., (204) Apr. 6, 1993 (pp. 4-5)

F.T. by the Watertown School Dist., (656)
March 4, 2010 (p.5)

Misconduct considered and determined by the board must have occurred within the time frame set forth in the notice. If not, decision will be reversed.

A. T. by Waupun School Dist., (625) July 11,
2008

Where there is no evidence that Board used or relied upon unnoticed allegations of misconduct in determining whether or not to expel, expulsion will not be overturned.

Eric P. by the Tomah Area School Dist. Board of Education, (210) August 12, 1993 (p. 11)

Jesse M. K. by the Tri-County Area School Dist., (266) Jan. 2, 1996 (p. 4)

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Board may not order expulsion based on repeated refusal to obey school rules where notice alleges misconduct endangering safety of others.

Randy H. by the Central Westosha UHS School Dist., (204) Apr. 6, 1993 (p. 5)

Benjamin L. by the Maple School Dist., (214) Dec. 29, 1993 (pp. 8- 9)

A school board may not consider allegations of misconduct not included in the notice of hearing mailed to the student for the purposes of determining grounds for expulsion. However, it may consider such allegations in determining whether the interest of the school demands the student's expulsion.

Kelly B. by the School Dist. of Three Lakes, (100) Aug. 23, 1982 (p. 2, footnote 2)

Joshua S. by the D.C. Everest School Dist., (170) May 22, 1990 (p. 7)

Jennifer P. by the Waukesha School Dist., (226) Apr. 18, 1994 (p. 5)

But see: Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

But if school board considers prior disciplinary history when determining whether or not to expel and prior disciplinary history is not part of the notice, expulsion will be reversed.

Kevin M. by the Oak Creek-Franklin School Dist., (181) Sept. 13, 1991 (p. 5-6)

Academic, attendance and disciplinary records need not be "noticed" if used as background information on the student as a student, and not as grounds for expulsion.

Joshua S. by the D.C. Everest School Dist., (170) May 22, 1990 (p. 7)

Kevin M. by the Oak Creek-Franklin School Dist., (181) Sept. 13, 1991 (p. 7)

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But see: Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

Where notice specifies the time period of potential expulsion, actual expulsion may not exceed such time period.

Ernesto G. by the Waukesha School Dist.,
(200) Dec. 14, 1992

Where notice advises that expulsion from middle school may result, the board may not apply the expulsion order in such a fashion so as to deny a student's admission into high school, if he is otherwise eligible to attend high school.

Bradley P. by the South Milwaukee School Dist., (201) Jan. 14, 1993 (p. 4)

Where board violated its own handbook definition of expulsion and expelled student for a period longer than set forth in the board adopted handbook, expulsion was affirmed because the period statutorily at risk was properly noticed.

NOTE: SPI was displeased, however, because school district used DPI form which was prepared to advise pupils and parents of the outside limits of the law, particularly in districts where expulsion notice forms include no mention of any period of expulsion.

It is incongruous for a board to adopt and impose rules of discipline on pupils subjecting violators to expulsion but not feel similarly constrained with respect to the rules the board places on itself.

Brandon H. D. by the De Soto Area School Dist. Bd. of Education, (206) May 3, 1993 (p. 7)

Where the board discusses a collateral issue at the expulsion hearing, for which there has been given no notice, expulsion will not necessarily be reversed when there is no evidence that the board used or relied on that information in reaching its decision.

Eric P. by the Tomah Area School Dist., (210)
Aug. 12, 1993 (p. 15)

Considering that prior academic, disciplinary and attendance records may be relevant to the mandated finding that the district's interest requires expulsion, SPI has stated, "[B]etter practice calls for every Notice of

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Expulsion to include a short provision" mentioning that the board may consider the prior records.

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (p. 13)

Benjamin L. by the Maple School Dist., (214)
Dec. 28, 1993 (p. 8)

See SPI's sample forms for Notice of Expulsion, including the recommended advance notice provision, pp. 20-22.

However, where prior records were used at the hearing but not mentioned in the notice, SPI did not reverse the expulsion decision. At the hearing neither the student nor his parents objected to the practice, expressed surprise, or questioned the accuracy of the prior disciplinary record. Furthermore, there was no suggestion that the prior disciplinary information was erroneous or was relied on by the board. In this case the district was following department precedent. Therefore, SPI found it unnecessary to reverse the school board's decision.

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (p. 2)

Benjamin L. by the Maple School Dist., (214)
Dec. 28, 1993 (p. 8)

NOTE: It cannot be recommended, however, that the board rely on the parents' failure to object. It seems unfair to hold parents to the same standard as a lawyer in objecting to improper testimony at a hearing.

After reviewing a notice and finding that it, among other things, provided that the student's prior academic, disciplinary, and attendance records may be considered by the board should it consider what the appropriate penalty should be for the student's actions, SPI stated, "The notice and its service fulfilled the statutory requirements," implying that this notice had been read into the statute, sec. 120.13(1)(c).

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 2)

However, in a later decision where attendance records were introduced at the hearing but not mentioned in the notice, SPI made no reference to this practice, reviewing the expulsion decision on other grounds.

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Joseph F. by the Almond-Bancroft School Dist.,
(191) May 13, 1992 (pp. 2, 5-6)

If the board provides notice to the pupil that records may be used to determine punishment, the board may use these records.

Matt H. by the Tomorrow River School Dist.,
(349) March 23, 1998

Leo P. by the Whitewater Unified School Dist.,
(351) March 31, 1998

Parents requested student records. Received some but not all. Mention was made during board hearing of prior disciplinary records not provided to parents. Since administration did not rely on prior disciplinary problems to support request for expulsion and board made no reference to prior disciplinary issues in its minutes, findings or order, there was no prejudice.

Jeffrey S. by the Riverdale School Dist.,
(243) Jan. 9, 1995 (p. 6)

When such notice was given and a new document was provided to the board at the hearing, student's remedy was a request for an adjournment to further investigate the document. The pupil (attorney) did not object and admission of the document was upheld by SPI.

Ben J. by the New Glarus School Dist.,
(504) Dec. 19, 2003

See also chapter IV L.5

Where expulsion is based on violations of school rules, the district must prove the existence of the rule and prior notice of it to the student body.

Jesse M. K. by the Tri-County Area School
Dist., (266) Jan. 2, 1996 (p. 5)

Where expulsion is based on repeated violation of school rules, record should contain evidence that student has been provided with a list of those rules and the consequences for violating them.

Antonio M. by the Kenosha Unified School
Dist., (176) Apr. 18, 1991 (p. 6)

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A student's conduct must be judged by the school district policy in effect at the time of the conduct even though that policy may have been subsequently changed.

Paul R. by the East Troy Community School Dist., (262) (p. 5)

Ernesto J. G. by the Waukesha School Dist., (269) Jan. 12, 1996 (pp 4-5)

Where a district noticed expulsion for violation of "contract" with student, proved violations of contract but also proved conduct not noticed, decision was upheld because "grounds for exclusion were adequately proven based on several serious violations of the contract." The better practice is to include in the record evidence of the existence of all rules allegedly violated as well as evidence the student received prior notice of the consequences for rule violations.

Ernesto J. G. by the Waukesha School Dist., (269) Jan. 12, 1996 (p. 5)

SPI strongly advises districts to give prompt notice to students and parents of any procedural or substantive changes in discipline policies. Failure to do so encourages litigation. It may also cause SPI to reverse decision "on constitutional grounds."

Donald P. by the Westby Area School Dist., (299) Aug. 9, 1996 (p. 6,7)

Sec. 120.13(1)(c), Stats., does not require that conduct which a school board has found to endanger the property, health or safety of others while at school or while under the supervision of a school authority be prohibited by school rules for such conduct to warrant expulsion. Furthermore, there is not necessarily a requirement that a student have prior notice from school authorities that such conduct might result in expulsion.

William S. by the Tri-County Area School Dist., (132) June 21, 1985 (p. 9)

D. S. by the Cedar Grove – Belgium Area School Dist., (552) July 11, 2005

It is within a school board's statutory authority to establish regulations imposing disciplinary measures for the failure of a student to serve

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detentions from a prior year, and the board can expel a student for violations of such regulations.

Robert M. by the Kiel School Dist., (149) April 30, 1987 (p. 6)

c. Time and Place of Hearing

Sec. 120.13(1)(c)4. states in part:

. . . **The notice shall state all of the following:**

b. The time and place of the hearing.

Notice of the hearing must provide the time and the date of the hearing. If hearing is held on a different date than that noticed, there must be documentation in the record to support the reason. The independent hearing officer's finding of a date change requested by the parent/guardian was insufficient with no documentation to support this finding. Consequently there was insufficient evidence in the record to find that the pupil was given notice of the actual date of hearing.

D. S. by Racine School Dist., (590) April 23, 2007

An error with respect to the date of an incident may be insufficient notice.

Justin B. by Central/Westosha High School Dist., (494) May 8, 2003

d. That Hearing May Result in Expulsion.

Sec. 120.13(1)(c)4. states in part:

. . . **The notice shall state all of the following:**

c. The hearing may result in the pupil's expulsion

Section 120.13 (1) (c) Stats., requires that an expulsion notice must advise that the expulsion "hearing may result in the pupil's expulsion."

Ernesto G. by the Waukesha School Dist. Board of Education, (200) Dec. 14, 1992 (p.4)

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Where notice of expulsion stated that student was facing expulsion for the 1992-93 school year and Board expelled through the 1993-94 school year, expulsion was reversed because notice failed to adequately and correctly advise pupil and parent of the actual interest at stake.

Ernesto G. by the Waukesha School Dist.
Board of Education, (200) Dec. 14, 1992 (p. 4)

Where notice of expulsion hearing clearly states that the maximum term of expulsion could be until student's 21st birthday, expulsion would be appropriate for any time less than his 21st birthday.

Jeremy H. by Fall Creek School Dist., (441)
August 9, 2001

Where notice advised student and parents that expulsion from middle school may result, it could not expel from high school even though sufficient time had passed and student had passed from middle school to high school.

Bradley P. by the South Milwaukee School
Dist. Board of Education, (201) Jan. 14, 1993
(p. 5)

The notice of the hearing did not advise the pupil of the maximum term of expulsion and therefore he was not advised of what interests are actually at stake at the hearing.

Joseph S. by the Oak Creek-Franklin Joint
School Dist., (403) Oct. 1, 1999 (p. 5)

BUT: The Circuit Court of Milwaukee County reversed the decision of the superintendent because it found that there is no requirement that the maximum term of expulsion be included in the notice, it just has to state that the hearing may result in the pupil being expelled. Oak Creek-Franklin Joint School Dist. v John T. Benson and Ronald and Wendy Seppi and Joseph Seppi (Cir. Ct., 2000), 99CV8859.

NOTE: The state superintendent has repeatedly suggested that school districts advise the pupil of the maximum length of expulsion.

Joshua D. by the Tomorrow River School Dist.,
(415) May 24, 2000 (p. 5)

e. Of Open Meeting Law Requirements

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Sec. 120.13(1)(c)4. states in part:

. . . **The notice shall state all of the following:**

d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.

Section 120.13(1)(c), Stats., states in part:

(c) Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing should be closed....

This statute allows a student to require that the expulsion hearing be held in closed session. It does not allow the student to require that a meeting be held in open session.

Rebecca S. by the Janesville School Dist.,
(248) May 8, 1995 (pp. 5-6)

N. K. by the Marshall School Dist., (620) May
15, 2008

The SPI is authorized to address the open or closed nature of the proceeding only if the pupil or the parent demands a closed meeting and that demand is denied.

Aron P. by the Sturgeon Bay School Dist.,
(341) Dec. 17, 1997

Matt H. by the Tomorrow River School Dist.,
(349) March 23, 1998

Lyle S. by the Whitewater School Dist., (378)
April 15, 1999

See also decision no. 626.

A school board may close an expulsion hearing to the public under the state's open meeting law without approval of the pupil. A pupil is only entitled to a closed hearing if he or she requests one.

Justin B. by Central/Westosha High School
Dist., (494) May 8, 2003

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Aaron S. by the Tri County Area School Dist.,
(522) July 26, 2004

N. K. by the Marshall School Dist., (620) May
15, 2008

The only notice required of the district is a five (5) day notice of the expulsion hearing to the pupil and parent. Notice issues under Wisconsin's Open Meeting Law are beyond the authority of an expulsion appeal. Complaints concerning violation of an Open Meeting's Law should be made to the county's district attorney.

B. S. by Marshall School District, (626) July 11, 2008

f. Right to Counsel

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.

Failure to notify pupil and parents of right to representation by counsel is grounds for a reversal of expulsion.

Phoua X. by the St. Francis School Dist. Bd. of
Education, (465) April 28, 2002

While student and parent must be informed that counsel may represent the student, there is no requirement that counsel be provided.

Stephanie T. by the Milwaukee School Dist.,
(348) March 3, 1998

Where student is informed of a right to be represented by counsel, there is no requirement than an attorney be appointed at public expense to represent the student. Student is entitled only to be informed of right to have counsel.

Shannon T. by the Milwaukee Public School
Dist., (354) April 16, 1998

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Jaime B. by the Barron School Dist., (358) May 14, 1998

While a pupil has a statutory right to be represented by an attorney at the expulsion hearing, there is no established right to a particular attorney or to a hearing on a particular day as long as sufficient notice has been provided.

P. A. by Janesville School Dist., (630) September 4, 2008

g. Minutes/Record

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

f. That the school board shall keep written minutes of the hearing.

See Chapter IV, X., Minutes/Record

h. Expulsion Order

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

g. That if the school board orders the expulsion of a pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

See Chapter VI, Order of Expulsion

i. Appeal

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor,

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the pupil's parent or guardian may appeal to the department.

See Chapter XI, Appeal to SPI.

j. SPI Review of Decision

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.

k. Enforcement of Expulsion During Appeal

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

j. That the decision of the school board shall be enforced while the department reviews the decision.

l. Appeal to Circuit Court

Sec. 120.13(1)(c)4. states in part:

. . . The notice shall state all of the following:

k. That an appeal from the decision of the department may be taken within 30 days to the circuit court of the county in which the school is located.

m. Notification of Expulsion Statutes

Sec. 120.13(1)(c)4. states in part:

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. . . The notice shall state all of the following:

L. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13(1).

There is no requirement that a copy of the statute be provided.

Aron P. by the Sturgeon Bay School Dist.,
(341) Dec. 17, 1997

Wisconsin Statute §120.13(1)(c)4 requires only a statement in the notice of expulsion hearing that the state's statutes related to pupil and expulsion are Sections 119.25 and 120.13(1).

B. S. by Marshall School District, (626)
July 11, 2008

Failure to correctly cite these statutes renders the notice defective.

Alex H. by the Eleva – Strum ES School Dist.,
(438) July 20, 2001

Curtis O. by St. Croix Central School Dist.,
(489) April 17, 2003

4. Amended Notices

As long as the district complies with the notice requirements, e.g. five days notice, the district may issue amended notices.

Telsea M. by the East Troy Community School
Dist., (408) Feb. 24, 2000 (p. 4)

5. Correction of Defective Notices

Where a pupil was offered an opportunity to reschedule a hearing because of defective notice and the pupil declined, this issue was considered waived for purposes of appeal.

Curtis O. by St. Croix Central School Dist.,
(489) April 17, 2003

See also XIV Correction of Prior Procedural Errors.

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B. Delay

1. Generally

Courts addressing due process in school disciplinary hearings seem to agree that flexibility is required in applying due process. Even though a school board may meet the statutory requirement of five days notice, in particular situations involving exigent circumstances such notice may be insufficient to satisfy due process.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (pp. 11-13)

School Boards should very carefully consider a request for postponement made for the purpose of securing legal counsel. Board should consider the nature of the request and state its reasons for granting or denying such a request. SPI has reversed expulsion order because of failure to reschedule or delay a hearing in order for parties to obtain counsel.

Ernestina G. by the Wautoma Area School Dist., (250) June 1, 1995 (p. 5)

However, postponement request at time of hearing is too late.

Brandon C. by the Florence County School Dist., (251) June 12, 1995 (p. 4)

For the other view that five days may be excessive notice, see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 2).

Where a student's due process rights require additional notice beyond what is statutorily required by sec. 120.13(1)(c), Stats., a school board's argument that the student would have to be returned to the classroom during the additional time allowed is an insufficient reason to refuse to postpone the hearing.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 14)

2. Student Request for Delay

The need to provide the substance and appearance of fairness is more acute in a situation where a school board serves both as investigator and adjudicator. In such a situation, fairness would dictate that the hearing

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board carefully explain to a student and his parents exactly what due process rights are afforded him.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 12)

Where it is obvious to all that a parent is desirous of being present, but physically unable to be in the hearing room, let alone participate, better practice calls for the school district, on its own initiative, to inquire whether the parent would like an adjournment in light of all the circumstances.

Michael C. G. by the Hudson School Dist., (219) Feb. 11, 1994 (pp. 7- 8)

Failure to do so, however, does not constitute grounds for dismissal.

Michael C. G. by the Hudson School Dist., (219) Feb. 11, 1994 (pp. 7- 8)

The school is not obligated to delay its proceedings because the parents chose not to participate.

Alex M. by Racine Unified School Dist., (533) Feb. 15, 2005 (p. 4)

B. W. by the Black River Falls School Dist., (542) May 26, 2005 (p. 6)

Where there was no express request for a postponement on the record and the extra record information from appellant was too general and contested by the district, the expulsion decision was not disturbed by SPI.

Michael C. G. by the Hudson School Dist., (219) Feb. 11, 1994 (p. 7)

Where a request for postponement is on the record, school boards should carefully respond to the request. The board should consider the nature of the request and state the reasons for either granting or denying such a request.

Raymond A. H. by the Menomonie Indian School Dist., (279) Mar. 22, 1996 (p. 4,5)

If record does not contain specific reasons for denial of a request for postponement, it is difficult for SPI to perform the review function.

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Raymond A. H. by the Menomonie Indian School Dist., (279) Mar. 22, 1996 (p. 4,5)

It appears that student, parent or counsel must request postponement. Where no request and pupil and counsel are present, no error.

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 9)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 5)

Justin O. by the Monona Grove School Dist., (332) Sept. 4, 1997 (p. 4)

The board's decision to deny pupil's second last-minute request for a postponement, when the pupil did not appear personally to ask, was not a procedural violation.

A. T. by the Oregon School Dist., (545) May 27, 2005 (p. 5)

Where student seeks adjournment of hearing to allow sufficient time to prepare for hearing, talk to a lawyer and/or have his father present, must do so before the hearing and to the board. If not raised before the board, it cannot be raised on appeal.

Travis J. M. by the Deerfield Community School Dist. Bd. of Education, (423) Sept. 25, 2000

While a pupil has a statutory right to be represented by an attorney at the expulsion hearing, there is no established right to a particular attorney or to a hearing on a particular day as long as sufficient notice has been provided.

P. A. by Janesville School Dist., (630) September 4, 2008

Pupil and/or parents made two requests for adjournment. Neither request was based on pupil's physical inability to attend the hearing based on infirmity or incarceration. The first request was granted. The second was not. The board's decision to proceed was not unreasonable and does not constitute a procedural violation.

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P. A. by Janesville School Dist., (630)
September 4, 2008

Board granted eleventh hour request for a postponement. Parties agreed on a new date and a new written notice was sent confirming that date. Attorney's eleventh hour request to postpone the second hearing was denied by the board. Board action affirming the denial was affirmed as reasonable.

A. T. by the Oregon School Dist., (545) May
27, 2005

On the day before hearing, parent told administration she had an appointment with the Sylvan Learning Center on the day of the expulsion hearing. Administration explained before the hearing that it would be difficult to reschedule the expulsion hearing and suggested she reschedule her meeting at Sylvan Learning Center. Parent made no request for an adjournment of the expulsion hearing and told administration they would not attend the hearing. No allegation that student was physically unable to attend the hearing. There was no obligation on the part of the board to postpone the hearing.

B. W. by the Black River Falls School Dist.,
(542) May 26, 2005

Parent received five days notice of hearing. Waited three and contacted an attorney by e-mail. No response. No further steps to find a different lawyer or to ask the school for an adjournment.

At the hearing she requested a postponement. The board was permitted to grant this request and it may have been advisable to postpone the hearing but the board was not obligated to do so under the circumstances.

T. J. E. by the Poynette School Dist., (601) July
20, 2007

3. Concurrent Civil or Criminal Proceedings

Courts have consistently held that a school board need not grant a postponement of a suspension or expulsion hearing pending a criminal proceeding that stems from the same conduct.

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John C. B. by the Milwaukee School Dist.,
(116) Oct. 31, 1983) (p. 6)

Joseph S. by the Oak Creek-Franklin Joint
School Dist., (403) Oct. 1, 1999

See also decision numbered 432.

The board is not required to delay action until other legal entities have acted.

Nick N. by the Elcho School Dist., (373) Dec. 4,
1998

Student charged under juvenile code and facing punishment in juvenile court may nevertheless be expelled.

Steven S. by the Merrill Area School Dist.,
(311) Feb. 7, 1997 (p. 5)

4. Refusal to Delay May Constitute A Denial of Due Process

Where a student's due process rights require additional notice beyond what is statutorily required by Sec. 120.13(1)(c), Stats., a school board's argument that the student would have to be returned to the classroom during the additional time allowed is an insufficient reason to refuse to postpone the hearing.

Michaelene J. by the Washington Island School
Dist., (161) May 17, 1989 (p. 14)

5. Board Delay

After beginning testimony, board adjourned hearing to comply with procedural requirement. Hearing then reconvened six days later. Not procedural error.

Michael S. by the Kukauna Area School Dist.,
(347) February 23, 1997

C. Effect of Board's Failure to Follow Its Own Pre-expulsion Procedures

The SPI must reverse an expulsion order in which the school board failed to establish evidence in the record that the board complied with its own

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specific policies and procedures adopted as an interpretation of sec. 120.13(1)(c), Stats.

Robert D., Jr. by the School Dist. of Crandon,
(138) May 21, 1986 (pp. 7-11)

But, where board violated its own handbook definition of expulsion and expelled student for a period longer than set forth in the board adopted handbook, expulsion was affirmed because the period statutorily at risk was properly noticed.

NOTE: SPI was displeased, however, because school district used a DPI form which was prepared to advise pupils and parents of the outside limits of the law, particularly in districts where expulsion notice forms include no mention of any period of expulsion.

It is incongruous for a board to adopt and impose rules of discipline on pupils subjecting violators to expulsion but not feel similarly constrained with respect to the rules the board places on itself.

Brandon H. D. by the De Soto Area School
Dist. Bd. of Education, (206) May 3, 1993 (p. 7)

See also Jessica H. by the School District of
Janesville Bd. of Education, (430) Mar. 29,
2001

But see decisions numbered 299, 330, 361, 537, 608, 609, 613, 614, 620 and 626 where SPI said whether the school district had or followed its policy is irrelevant to SPI review.

D. Pre-expulsion Handling of Behavior Issues

There is no legal requirement to address behaviors prior to expulsion unless a child is identified with an exceptional educational need or disability.

Nathan H. by the Westbend School Dist., (342)
January 13, 1998

E. Pre-hearing Meeting – Board and Administrator

The board and district administrator met prior to an expulsion hearing for the purpose of reviewing federal and state laws regarding possession of

Chapter III – Prehearing Procedures

weapons on school property. Administrator stated that he had made a general presentation, at the request of the board, and the presentation was not specific to the student's case.

The SPI recommends that the district administrator not have "private conversations" with the board regarding an expulsion. If the information is related to the student's case, the student should be present. If the information is general information, not related to the student's case, it would be better to present this information during an open board meeting. SPI cautions boards regarding the preferred method but does not overturn this expulsion.

Eric H. by the Central-Westosha Union High School Dist., (377) March 17, 1999

Lyle S. by the Whitewater School Dist., (378) April 15, 1999

F. Pre-expulsion Hearing or Meeting Between Staff and Student

Some school districts hold pre-expulsion meetings or hearings between administrative staff members, students and parents. Such a meeting is not an expulsion hearing under Section 119.25 or 120.13(1)(c) Stats. As it is not, the superintendent has no authority to review it.

IV. Hearing

A. Generally

The need to provide the substance and appearance of fairness is more acute in a situation where a school board serves both as investigator and adjudicator. In such a situation, fairness would dictate that the hearing board carefully explain to a student and his parents exactly what due process rights are afforded him.

Pupil expulsions are administrative proceedings and not subject to civil procedure found in Wisconsin Stat. Chapter 801-847.

B.J. by the Nicolet Union High School Dist.,
(647) July 17, 2009

Michaelene J. by the Washington Island School
Dist., (161) May 17, 1989 (p. 12)

1. Minimal Due Process

It is well established that a student is entitled to due process at an expulsion hearing (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Michaelene J. by the Washington Island School
Dist., (161) May 17, 1989 (p. 8)

Joshua S. by Madison Metropolitan School
Dist., (525) Oct. 20, 2004 (p. 9)

"The process due a student in a disciplinary action is to be determined by balancing the deprivation at stake with the efficiency possible in the hearing and, we believe, the ability of the school board to implement those protective procedures" (quoting Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Michaelene J. by the Washington Island School
Dist., (161) May 17, 1989 (p. 9)

See also Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

Chapter IV – Hearing

The procedural due process due a student facing expulsion or long term suspension is identified in *Goss v. Lopez*, 419 U.S. 565, 573-76 (1975). Due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial and the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding. *Linwood v. Board of Education*, 463 F.2d 763, 770 (7th Cir. 1972). Compliance with the statutory requirements in § 120.13 ensures that the requirements of procedural due process as defined in *Goss* have been met.

B. R. by the Hamilton School Dist., (555)
August 5, 2005 (p. 3-4)

Courts addressing due process in school disciplinary hearings seem to agree that flexibility is required in applying due process. Even though a school board may meet the statutory requirement of five days notice in particular situations involving exigent circumstances, such notice may be insufficient to satisfy due process.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (pp. 11-13)

For the other view that five days may be excessive notice, see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 2).

A student facing expulsion is entitled not only to timely and adequate notice of the charges, but also to a meaningful opportunity to be heard (citing *Keller v. Fochs*, 385 F. Supp. 262 [E.D. Wis. 1974]).

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 9)

Shane M. B. by the Green Bay Area Public School Dist., (190) Apr. 21, 1992 (p. 5)

Joseph F. by the Almond-Bancroft School Dist., (191) May 13, 1992 (p. 5)

Bradley Scott P. by the Menasha Joint School Dist., (197) Aug. 21, 1992 (p. 4)

The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner (citing *Bunker v. Labor & Indus. Review Comm'n*, 2002 WI App 216, ¶ 19, 257 Wis. 2d 255, 267, 650 N.W.2d 864, 870 (Ct. App. 2002)).

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Joshua S. by Madison Metropolitan School Dist., (525) Oct. 20, 2004 (p. 9)

The need to provide the substance and appearance of fairness is more acute in a situation where a school board served both as investigator and adjudicator. In such a situation, fairness would dictate that the hearing board carefully explain to a student and his parents exactly what due process rights are afforded him.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 12)

Where a student's due process rights require additional notice beyond what is statutorily required by Sec. 120.13(1)(c), Stats., a school board's argument that the student would have to be returned to the classroom during the additional time allowed is an insufficient reason to refuse to postpone the hearing.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 14)

The board should be absolutely clear in (a) explaining the pupil's right to testify as to any facts, (b) determining whether or not the student wishes to waive that right, and (c) distinguishing his right to testify or not testify from his right to argue whether he testified or not.

Antonio M. by the Kenosha Unified School Dist., (176) April 18, 1991 (p. 7)

Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence, does not apply to administrative expulsion hearings.

Jeremy B. by the Waukesha School Dist., (395) Aug. 16, 1999 (p. 8)

Julia M. by the Hamilton School Dist., (412) April 11, 2000 (p. 4)

Michael S. by the South Milwaukee School Dist., (428) Dec. 26, 2000 (p. 4-5)

See also decisions numbered 412, 428 and 460.

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B. Right to Closed Hearing

Section 120.13(1)(c), Stats., states in part:

(c) Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. . . .

However, a student possesses no right to demand an open hearing, and the board retains the authority under Sec. 19.85, Wis. Stats, to determine whether a closed session is appropriate even in the absence of such a demand.

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (pp. 5-7)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 5)

Rebecca S. by the Janesville School Dist., (248) May 8, 1995 (pp. 5-6)

See also decision numbered 456 and 620.

The board properly closed session on its own motion citing Sec. 19.85(1)(f), Stats., as basis for closed meeting based on facts and circumstances of that case.

Courtney R. by the Germantown School Dist., (278) Mar. 21, 1996 (p. 6)

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 6)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 5)

See also decisions numbered 248 and 620.

Sec. 19.85(1)(f), Stats., states as follows:

A closed session may be held for any of the following purposes:

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* * *

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons . . . which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

See also Chapter III, A., 3. e. p. 110.

District's request that pupil give advance notice of desire to proceed in open session not inconsistent with Sec. 19.85, Stats.

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 7)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 5)

Statutes do not authorize SPI to determine whether or not a violation of open meeting laws have occurred in an expulsion proceeding.

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 7)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 5)

The state superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied.

Aron P. by the Sturgeon Bay School Dist., (341) Dec. 17, 1997

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

See also decisions numbered 378 and 620.

Chapter IV – Hearing

Where board held hearing in closed session despite pupil's request for an open session, issue was not appropriate in an expulsion appeal.

Nicole G. by the Ashland School Dist., (390)
July 1, 1999

Notice that advised pupil that hearing would be closed was not insufficient because a pupil does not have a statutory right to an open hearing if the board has determined that a closed hearing is warranted pursuant to Wis. Stat. §§ 19.85(1)(a) and (f).

Aaron S. by the Tri-County Area School Dist., (522)
July 26, 2004 (p. 4)

Allowing a witness, whether it is a factual witness or a character witness, to attend the hearing and give testimony does not violate the right to a closed hearing.

Luke D. by Durand School Dist., (483) Feb. 14,
2003

C. Quorum

A quorum of a school board may appropriately conduct a hearing and render an expulsion decision. A majority of elected school board members constitutes a quorum.

Tom C. by the School Dist. of Lake Holcombe,
(115) Oct. 18, 1983 (p. 3)

A. W. by the Spooner Area School Dist., (577)
July 27, 2006

J.S. by the Stevens Point School Dist., (634)
January 16, 2009.

As long as a quorum is present, in other words a majority of the elected school board members, this is sufficient for an expulsion hearing.

T. J. E. by the Poynette School Dist., (601) July
20, 2007

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A board member may leave the hearing and then not participate in the deliberation. All board members who deliberate must have heard all of the evidence.

Shawn C. by the Mauston School Dist., (375)
Dec. 29, 1998

D. Reading of Rights to Student

Reading of rights and procedures to student is not required. Encouraged by SPI because helpful to everyone involved.

Charles E. by the Elkhart Lake-Glenbeulah School Dist., (355) April 20, 1998

E. Bias

1. Of Board Members

Due process requires that the hearing be conducted by an impartial tribunal.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 10)

The law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith.

Heiny v. Chiropractic Examining Board, 167
Wis. 2d 187 (Ct. App. 1992)

State ex rel. Wasilewski v. Board of School Directors, 14 Wis. 2d 243, 266 (1961)

Nicholas E. by the Lodi School Dist., (303) Oct.
17, 1996 (p. 7)

John Michael N. by the Random Lake School Dist., (331) Aug. 5, 1997 (p. 4)

See also decisions numbered 336, 390, 395,
420, 421, 424, 448, 498, 499, 501, 529, 550,

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555, 579, 591, 613, 614, 639, 650, 661 and 665.

Pupil must object to the board members participation at hearing in order for issue to be raised on appeal.

Nicholas E. by the Lodi School Dist., (303) Oct. 17, 1996 (p. 7)

Allegations regarding the attitude or motivation of the school board are beyond the scope of review by the state superintendent unless there is an allegation of board member discrimination against the student.

Adam F. by the Kenosha Unified School Dist., (146) Oct. 24, 1986 (p. 5)

A school board member is not necessarily biased merely because he or she is distantly related to the student being expelled, and the student must be able to prove the bias of such a board member with evidence in the record.

Robert M. by the Kiel School Dist., (149) April 30, 1987 (pp. 8-9)

Nicholas E. by the Lodi School Dist., (303) Oct. 17, 1996 (p. 7)

There was a great potential for bias on the part of the decision making board, which not only voted for expulsion but also took part in a confidential investigation prior to the expulsion hearing. The charges at the expulsion hearing were based on testimony elicited at investigative sessions conducted by the board.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 11)

Record must contain evidence of actual bias or conflict or circumstances which would lead to a high probability of bias or conflict.

Kathleen W. by the Tri-County Area School Board of Education, (130) May 10, 1985

Nicholas E. by the Lodi School Dist., (303) Oct. 17, 1996

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John Michael N. by the Random Lake School Dist., (331) Aug. 5, 1997 (p. 5)

See also decisions numbered 390, 420, 529, 550, 555 and 614.

The assertion of bias or predisposition is insufficient to overcome this presumption where the record contains no evidence of actual bias nor does it reflect circumstances which would lead to a high probability of bias or predisposition.

Jennifer L. by the Milwaukee Public School Dist., (336) September 15, 1997

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005

D. L. by the Wheatland Center School Dist., (613) March 27, 2008

The fact that the board agreed with the district administrator's recommendation does not prove, or even imply, that the board predetermined the result.

Jared K. by the West Allis School Dist., (421) June 30, 2000 (p. 6)

Where school board allowed district administrator to remain in the room during board deliberations, the superintendent found this to be an appearance of impropriety tainting the deliberative process. Superintendent found that board could not be presumed to be unbiased and reversed the expulsion. Required school board, if it wished to rehear the expulsion case, do so using an independent hearing officer or independent hearing panel.

Joseph S. by the Oak Creek – Franklin Joint School Dist., (403) October 1, 1999

NOTE: This issue was appealed to the Circuit Court of Milwaukee County, which reversed the superintendent's decision finding that the presence of the district administrator had not tainted the deliberative process. Oak Creek – Franklin Joint School District vs. John Benson and Ronald, Wendy and Joseph Seppi, (May 2000, Case NO. 99-CV-008859).

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The superintendent or assistant superintendent remained with the board during deliberations, SPI found that decision would not be overturned as there was no evidence that either did anything to influence the board.

Aaron R. by DC Everest School Dist., (472)
July 18, 2002

In spite of the fact that the Milwaukee County Circuit Court found this practice to be satisfactory, I do not agree. The SPI in its decision, and the matter of the expulsion of Aaron R. defers to the Circuit Court decision. I do not agree. It does not matter whether the administration attempted to influence the board during deliberations. It does matter that the process APPEARS to be unfair to the student and his or her parents under these circumstances. How does the involvement of staff with the board during deliberations help the board without hurting the student? If the board has questions, it can call for staff and student to return to the room and ask those questions. The goal here is due process, fairness. It is important for the student and his or her parents to believe that fairness has occurred.

Further, there is probably no record (audiotape or court reporter) during deliberations. Neither is it fair to require the persons not in the room (students and parents) to prove that administration did attempt to influence the board when student and parent were not present and there is no record of what happened in that room. In my mind, fairness requires that staff and parents remain outside of the board's deliberation room. If questions come up during deliberations, staff and student should be called to the room for the purpose of getting those questions answered.

See also Tiffany S. by the Edgerton School Dist., (517) June 21, 2004

Student who believes he has been discriminated against because of his race must follow the district's nondiscrimination policy and procedure and may file an appeal under Wis. Stats. 118.13.

D. N. by Germantown School Dist., (586)
February 6, 2007

2. Of Staff

There is a legal presumption that public officials act fairly, impartially and in good faith (citing State ex rel. Wasilewski v. Board of School Directors, 14 Wis. 2d 243, 111 N.W.2d 198 [1961]).

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Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 10)

Danielle A. W. by the Baron Area School Dist., (310) Jan. 31, 1997 (p. 5)

See also decision numbered 436.

In order to support an allegation of bias on the part of a school official, there must be some evidence in the record to show either actual bias or that there were special facts or circumstances which would lead one to believe that there was a high probability of bias (citing State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 [1976]).

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 9)

Statements made by a school official prior to a student's misconduct which reflect the official's desire to expel the student are irrelevant to the merits of the expulsion because the student alone is responsible for his own behavior.

Robert M. by the Kiel School Dist., (149) April 30, 1987 (p. 6)

Student who believes he has been discriminated against because of his race must follow the district's nondiscrimination policy and procedure and may file an appeal under Wis. Stats. 118.13.

D. N. by Germantown School Dist., (586) February 6, 2007

3. Of Hearing Officer

Where the attorney for the school district acts as hearing officer ex officio, and another attorney presents the case for the school district, and there is no evidence to indicate the officer had bias in favor of either party, it does not constitute a denial of a pupil's right to an impartial hearing officer.

Brad M. V. by the Boyceville Community School Dist., (233) June 29, 1994 (p. 6)

Chapter IV – Hearing

Student who believes he has been discriminated against because of his race must follow the district's nondiscrimination policy and procedure and may file an appeal under Wis. Stats. 118.13.

D. N. by Germantown School Dist., (586)
February 6, 2007

F. Quantum of Proof

School disciplinary proceedings require that school need only establish the truth of the charge by a preponderance of the credible evidence.

Earl N. by the Milwaukee School Dist., (111)
March 3, 1983 (p. 4)

Because an expulsion hearing is a civil proceeding, the school district is required to establish its case against the student by a preponderance of the evidence.

Hearsay testimony from school administrators alone may constitute sufficient evidence to support an expulsion when there are factors establishing the reliability and probative value of such testimony.

John C. B. by the Milwaukee School Dist.,
(116) Oct. 31, 1983 (pp. 7-8)

Conduct need not be proven beyond a reasonable doubt. While courts have not definitely declared the burden of proof in expulsion cases, the argument focuses on much lower standards such as more likely than not, preponderance of the evidence, and clear and convincing.

Butler v. Oak Creek-Franklin School Dist., 172 F.
Supp. 2d 1102 (E.D.Wis. 2001)

C. L. by the Clayton School Dist., (599) June 29,
2007

G. Witnesses

1. Subpoenas

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Board has power to issue subpoenas. Parent and student do not. Refusal by board to issue subpoenas a denial of due process and grounds for SPI reversal of expulsion. Board not required to serve subpoenas.

Chad B. by the Janesville School Dist., (203)
Apr. 1, 1993 (p. 5)

Michael E. by the Oconomowoc Area School Dist., (212) Mar. 12, 1993 (p. 5)

See also decision numbered 399.

2. Oath of Witnesses

An oath is not required of witnesses. It is, however, preferred.

Chad S. by the Hartford Union School Dist.,
(273) Feb. 9, 1996

Aron P. by the Sturgeon Bay School Dist.,
(341) Dec. 17, 1997

Michael E. K. by the Burlington Area School Dist., (449) Feb. 13, 2002

While testimony under oath is preferable, there is not a statutory or constitutional obligation to do so.

Justin B. by Central/Westosha High School Dist., (494) May 8, 2003

Tyler H. by Milton School Dist., (498) June 23,
2003

3. Identity of Witnesses

Student not entitled to learn identity of student witnesses prior to hearing.

Nicholas K. by the Hudson School Dist., (305)
Dec. 5, 1996 (p. 5)

Timothy W. by the Greenfield School Dist.,
(315) March 21, 1997 (p. 6)

See also decisions numbered 513 and 514.

Chapter IV – Hearing

Allowing a witness, whether a factual witness or character witness, to attend the hearing and give testimony does not violate the right to a closed hearing.

Luke D. by Durand School Dist., (483) Feb. 14, 2003

4. Confrontation of Witnesses

There is no authority for the proposition that a student has the right to confront the witness against him or her in an expulsion hearing.

William S. by the Tri-County School Board, (132) June 21, 1985 (p. 8)

Courtney R. by the Germantown School Dist., (278) Mar. 21, 1996 (p. 7)

There is no right to cross-examine students who accuse the pupil of misconduct and who are not called as witnesses at the hearing.

Jack M. by Mercer School Dist., (514) May 7, 2004

Where board received numerous written statements from students (not identified by name), expulsion was upheld. There is no authority for the proposition that a student has a right to confront the witness against him or her in an expulsion hearing.

William S. by the Tri-County Area School Bd., (132) June 21, 1985 (p. 8)

Courtney R. by the Germantown School Dist., (278) Mar. 21, 1996 (p. 7)

Nicholas K. by the Hudson School Dist., (305) Dec. 5, 1996 (p. 4)

Timothy W. by the Greenfield School Dist., (315) March 21, 1997 (p. 6)

The board is authorized, pursuant to Sec. 885.01(4), Wis. Stats., to issue subpoenas to compel the presence of a witness at expulsion hearings, and

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the failure to do so upon a parent's request, constitutes a denial of procedural rights.

Chad B. by the Janesville School Dist., (203)
Apr. 1, 1993 (pp. 40- 5)

A school board can base an expulsion in part on the hearsay testimony of a school official.

William S. by the Suring School Dist., (98) June
17, 1982 (pp. 2- 3)

Nicholas K. by the Hudson School Dist., (305)
Dec. 5, 1996 (p. 4)

Timothy W. by the Greenfield School Dist.,
(315) March 21, 1997 (p. 6)

See Chapter IV, L., 2. – Hearsay

5. Right of Cross-examination

Where it is clear that student and parent exercised the right to cross-examine witnesses, it was not error because with respect to one of the witnesses the chair did not ask if student had questions. No evidence here that pupil was prevented from asking questions.

Alexander B. by Milwaukee School Dist., (453)
Feb. 1, 2002

In an expulsion hearing, a student's right to cross-examine a witness is not infringed upon by an objection raised by opposing counsel which is never ruled on by the school board, because such an objection is treated as a nullity and as though the objection had never been raised.

Sean H. by the Milwaukee School Dist., (106)
Feb. 10, 1983 (p. 4)

The student's parent may not testify and cross-examine the board's witness (e.g. the student) until the board has finished presenting its entire case.

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (p. 4)

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Where written statements of students received by board, student had no right to cross-examine students from whom statements were taken, even though the students were present at the hearing but did not testify.

Kenneth J. by the Sheboygan Area School Dist., (306) Dec. 9, 1996 (p. 4)

By refusing or neglecting to attend his expulsion hearing, the pupil has forfeited the opportunity to cross-examine witnesses or point out inconsistencies.

Kyle J. W. by the Viroqua School Dist., (413) April 27, 2000 (p. 8)

The board must determine whether our facts support expulsion and the length of expulsion. Board members are therefore entitled to cross examine student who has testified.

Jeremy H. by Fall Creek School Dist., (441) August 9, 2001

6. Administrators as Witnesses

An administrator who conducted or participated in an investigation of student misconduct may present evidence at expulsion hearings.

Courtney R. by the Germantown School Dist., (278) Mar. 21, 1996 (p. 5)

School Officials have an obligation to investigate and can properly present at the hearing written as well as oral statements taken from students in the course of that investigation.

Kenneth J. by the Sheboygan Area School Dist., (306) Dec. 9, 1996 (p. 4)

Hearsay statements from school teachers or staff members are admissible in a school disciplinary hearing and can have sufficient probative force upon which to base, in part, an expulsion (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 8)

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William S. by the Tri-County Area School Bd.,
(132) June 21, 1985 (p. 10)

See also decisions numbered 278 and 381.

A school board has the power to base its decision to expel entirely on the hearsay testimony of school officials, when the school officials are charged with a duty to investigate alleged misconduct and such officials present testimony at the hearing as to statements made to them in the course of their investigation by students who witnessed the conduct.

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 9)

William S. by the Tri-County Area School Bd.,
(132) June 21, 1985 (p. 11)

Courtney R. by the Germantown School Dist.,
(278) Mar. 21, 1996 (p. 7)

Allegations that the superintendent was rude were not cause to overturn an expulsion.

Tyler R. by Rib Lake School Dist., (473) July
22, 2002

7. Credibility of Witnesses

When sitting as the trier of fact in an expulsion hearing, it is solely within the province of the school board to judge the credibility of the witnesses and determine whom they believe when faced with conflicting testimony (citing State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 [1976]; State ex rel. Wasilewski v. Board of School Directors, 14 Wis. 2d 243, 111 N.W.2d 198 [1961]).

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 8)

William S. by the Tri-County Area School Bd.,
(132) June 21, 1985 (p. 10)

This applies to the hearing officers and panels as well.

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A.B. by the Milwaukee Public School Dist.,
(657) March 4, 2010

Allegations as to the credibility or sufficiency of the evidence are beyond the scope of review by the SPI.

Roy H. by the Blair School Dist., (159) Sept.
26, 1988 (p. 9)

Joshua S. by the D.C. Everest School Dist.,
(170) June 22, 1990 (p. 8)

See also decisions numbered 186, 398 and
579.

The credibility of witnesses is judged by the school board. It is the province of the board to evaluate the evidence and to determine whom they believe.

Nikkole K. by the Janesville School Dist., (238)
Sept. 16, 1994 (p. 5)

Tracy M. by the Random Lake School Dist.,
(244) Jan. 11, 1995 (p. 3)

See also decisions numbered 473, 490, 493,
579, 593, 594, 599, 600, 603, 614, 616 and
619.

The board is in the best position to judge credibility.

John N. by the Colfax School Dist., (384) June
2, 1999

See also decisions numbered 267, 274, 276,
289, 305, 306, 398, 406, 413, 428, 439 and
456, 588, 593, 594, 599, 600, 603, 614, 616
and 619.

The board is in the best position to determine the bias and credibility of a witness.

Joshua D. by the Tomorrow River School Dist.
(415) May 24, 2000 (p. 3)

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The board is in the best position to judge the demeanor of witnesses.

Nickenia S. by the Milwaukee Public School Dist., (528) January 11, 2005

Danielle C. by the Cedarburg School Dist., (529) January 28, 2005

Chelsea N. by the Appleton Area School Dist., (530) January 28, 2005

See also decisions numbered 532, 535, 536, 537, 540, 541, 542, 543, 544, 550, 551, 552, 579, 581, 582, 588, 594, 599, 600, 614, 616, 619 and 624.

It is within the board's discretion to give weight to the evidence and arguments, as it deems appropriate and to judge the credibility of witnesses.

Aaron S. by the Tri-Count Area School Dist., (522) July 26, 2004 (p. 6)

David S. by the Elk Mound School Dist., (524), August 26, 2004 (p. 4)

See also decisions numbered 549, 550, 554, 557, 558, 582, 588, 593, 594, 599, 600, 603, 614, 616, 619 and 650.

The board is in the best position to resolve a conflict in testimony.

Dustin L. F. by the Altoona School Dist., (432) April 11, 2001 (p. 5)

Michael J. by the Nicolet Union High School Dist. Bd. of Education, (456) March 4, 2002 (p. 4)

Aaron S. by the Tri County Area School Dist., (522) July 26, 2004

See also decisions numbered 579, 588, 593, 594, 599, 600, 603, 614, 616 and 619.

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Written statements from students could certainly be viewed as reliable by the board in that the statements were self-incriminating. Although the students refused to answer additional questions at the hearing regarding the incident, their identities were revealed to the pupil and they were present at the hearing. The pupil was not unfairly denied an opportunity to rebut their statements.

Kenneth J. by the Sheboygan Area School
Dist., (306) Dec. 9, 1996 (p. 4)

The hearing officer was in the best position to resolve testimony. It is within the hearing officer's discretion to give weight to the evidence and arguments as the hearing officer deems appropriate and to judge the credibility of witnesses.

C. B. W. by the Kenosha Unified School Dist.,
(539) April 21, 2005

8. Surprise At Testimony

When the teachers who submitted disciplinary reports that were included in the list of incidents attached to the notice testified to those events at the hearing, there was notice of their testimony and no reason for the student's parents to be surprised by it.

Taiwan O. W. by the Kenosha Unified School
Dist., (186) Apr. 7, 1992 (p. 5)

H. Student's Right To Present Case, Testify - Argue

The board should be absolutely clear in (a) explaining the pupil's right to testify as to any facts, (b) determining whether or not the student wishes to waive that right, and (c) distinguishing his right to testify or not testify from his right to argue whether he testified or not.

Antonio M. by the Kenosha Unified School
Dist., (176) Apr. 18, 1991 (p. 7)

An admonition to the student that, should he choose to testify, his testimony may be used against him in future juvenile delinquency or adult criminal proceedings may have a chilling effect upon the student's decision whether or not to testify. As such, such an admonition may inadvertently encourage the silence of the pupil. Were it to appear that the student

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refused to testify because of such an admonition, such may be prejudicial error and the grounds for reversal of the expulsion.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 16-20)

When expulsion is a discretionary punishment, the district must allow the student and parents the opportunity to present evidence that will mitigate the punishment.

The district has a constitutional obligation to consider mitigating evidence before deciding to expel the student.

Lamb v. Panhandle Community Union Sch. Dist., 826 F. 2d 526, 578 (7th Cir. 1987) (Quoting, Betts v. Board of Education, 466 F. 2d 629 (7th Cir. 1972); See also Lee v. Macon County Board of Education, 431 F. 2d 409 (5th Cir. 1974).

Pupil can waive inability to present witnesses at the hearing. Board offered student option of postponing hearing so that witnesses could be present. Student chose to continue with the hearing and submit into the record a letter of information and recommendations written by witnesses. Pupil not, therefore, prejudiced, by the fact that his witnesses did not testify at the hearing.

Jaime B. by the Barron School Dist., (358) May 14, 1998

I. Self-Incrimination

School disciplinary proceedings are administrative proceedings which are not sufficiently criminal in nature to require the Fifth Amendment's protection against self-incrimination.

John C. B. by the Milwaukee School Dist., (116) Oct. 31, 1983 (p. 5)

Michael Ryan H. by the Clinton Community School Dist., (222) Mar. 9, 1994 (p. 6)

An admonition to the student that, should he choose to testify, his testimony may be used against him in future juvenile delinquency or adult criminal proceedings may have a chilling effect upon the student's decision

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whether or not to testify. As such, such an admonition may inadvertently encourage the silence of the pupil. Were it to appear that the student refused to testify because of such an admonition, such may be prejudicial error and the grounds for reversal of the expulsion.

Patrick Lee Y. by the Kenosha Unified School
Dist., (182) Oct. 9, 1991 (pp. 16-20)

J. Presentation of Case by Administrators

Sec. 119.25(b) prohibits administrators of first class school districts (Milwaukee) from participating in the hearing. Administrators may participate (and may present administration's case) in all other Wisconsin districts.

Matthew R. by the Burlington Area School
Dist., (383) May 27, 1999

K. Legal Counsel

Section 120.13(1)(c), Stats., states in part:

(c) . . . The pupil and, if the pupil is a minor, the pupil's parent or guardian, may be represented at the hearing by counsel. . . .

At one time, statute did not require that notice letter refer to statutory right to retain counsel. In spite of this, SPI recommended that notice letter refer to statutory right to retain counsel.

Miranda V. by the Howard-Suamico School
Dist., (224) Mar. 22, 1994 (pp. 7-8)

Statute, Sec. 120.13(1)(c)4.e., now requires that notification be given of right to retain counsel.

Expulsion hearing is not a form in which to air ethical grievances regarding attorneys.

Michael J. by the Nicolet Union High School
Dist. by Bd. of Education, (456) March 4, 2002

1. Student

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Inability of student's attorney to appear at time and place of hearing may require a delay in proceedings.

Michaelene J. by the Washington Island School Dist., (161) May 17, 1989 (p. 14)

Isaac S., II by the Milwaukee School Dist., (187) Apr. 21, 1992 (p. 9)

But see A. T. by the Oregon School Dist., (545) May 27, 2005 (p. 5).

Board request that pupil's attorney be briefed does not constitute denial of right to present legal argument in evidence.

Aron P. by the Sturgeon Bay School Dist., (341) Dec. 17, 1997

While student and parent must be informed that counsel may represent the student, there is no requirement that counsel be provided.

Stephanie T. by the Milwaukee School Dist., (348) March 3, 1998

While the pupil has a statutory right to be represented by an attorney at the expulsion hearing, there is no established right to a particular attorney or to a hearing on a particular day as long as sufficient notice has been provided.

A. T. by the Oregon School Dist., (545) May 27, 2005 (p. 5)

Where student is informed of a right to be represented by counsel, there is no requirement than an attorney be appointed at public expense to represent the student. Student is entitled only to be informed of right to have counsel.

Shannon T. by the Milwaukee Public School Dist., (354) April 16, 1998

2. Board

There is no statutory requirement that either or both the board and administration have counsel. Therefore, a student-appellant's argument

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that his expulsion should be reversed because there was no separate counsel for the school board and administration is without merit.

Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (pp. 4-5)

Kathleen W. by the Tri-County Area School Board, (130) May 10, 1985 (p. 10)

William S. by the Tri-County Area School Board, (132) June 21, 1985 (pp. 11 & 12)

The same attorney may assist the administration and the school board in their duties at an expulsion hearing. There is no evidence of misconduct or unfairness in the attorney's representation of the board and the administration.

Michael S. by the Kaukauna Area School Dist., (347) February 23, 1997

Shawn C. by the Mauston School Dist., (375)
Dec. 29, 1998

Pupil's attorney notified board that board's attorney had previously represented student's father. This was not misconduct. There was no evidence that board's attorney had bias and no objection voiced at the hearing. The argument regarding conflict was waived.

Shawn C. by the Mauston School Dist., (375)
Dec. 29, 1998

Zachary S. by Oconomowoc Area School Dist., (500) Aug. 28, 2003

L. Evidence

1. Rules of Evidence Generally

In the conduct of expulsion proceedings, lay boards of education are not bound by the technical niceties of the rules of evidence or procedure (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334, [Ct. App. 1982]).

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Sean H. by the Milwaukee School Dist., (106)
Feb. 10, 1983 (p. 3)

Kristen J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 3)

Lay boards of education are not bound by the provisions of Chapter 227, Stats., and need only abide by the specific procedures set forth in Sec. 120.13(1)(c), Stats. (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Sean H. by the Milwaukee School Dist., (106)
Feb. 10, 1983 (p. 5)

A school board may not consider allegations of misconduct not included in the notice of hearing mailed to the student, but may consider such allegations in determining whether the interest of the school demands the student's expulsion.

Kelly B. by the School Dist. of Three Lakes,
(100) Aug. 23, 1982 (p. 2, footnote 2)

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991

See also Chapter III.A., 3.b. and Chapter IV. J.

Academic, attendance and disciplinary records may be considered, even though not "noticed" as issues for the hearing if used as background information on the student, as a student, and not as grounds for expulsion.

Joshua S. by the D.C. Everest School Dist.,
(170) June 22, 1990 (p. 7)

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991

See also Chapter III. A. 3. b. and Chapter IV. L.
5.

If the board provides notice to the pupil that records may be used to determine punishment, the board may use these records.

Matt H. by the Tomorrow River School Dist.,
(349) March 23, 1998

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Leo P. by the Whitewater Unified School Dist.,
(351) March 31, 1998

See also Chapter III.A., 3.b. and Chapter IV.J.1

Where the board discusses a collateral issue at the expulsion hearing, for which there has been given no notice, expulsion will not necessarily be reversed when there is no evidence that the board used or relied on that information in reaching its decision.

Eric P. by the Tomah Area School Dist., (210)
Aug. 12, 1993 (p. 15)

Amanda L. by the Hartford UHS School Dist.,
(257) Aug. 3, 1995 (p. 5)

It is within the board's discretion to give weight to the evidence as it deems appropriate and to judge the credibility of the witnesses.

Kyle J. W. by the Viroqua Area School Dist.,
(413) April 27, 2000 (p. 7)

Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence, does not apply to administrative expulsion hearings.

Jeremy B. by the Waukesha School Dist., (395)
Aug. 16, 1999 (p. 8)

Julia M. by the Hamilton School Dist., (412)
April 11, 2000 (p. 4)

See also decisions numbered 412, 428, 454,
488, 510 and 614.

Because expulsions are considered on a case by case basis, the treatment of other students is not relevant.

Nicole R. by Arcadia School Dist., (480)
Nov. 20, 2002

Benjamin Z. by the Marinette School Dist. (507)
March 1, 2004

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See also decisions numbered 520, 524, 529, 535, 543, 550, 582, 640, 645, 652, 653, 661, 663 and 665.

Pupil and parent should be provided with access to all information considered by the school board.

Matthew C.M. by the Cedarburg School District Board of Education, (274) February 14, 1996

D.P. by the Dodgeand School District Board of Education, (654) October 20, 2009

2. Hearsay

Pupil's accuser need not be present at an expulsion hearing.

D.P. by the Dodgeand School District Board of Education, (654) October 20, 2009

Hearsay evidence is admissible in an expulsion hearing and may be relied upon by school board.

Carlos M. by the West Allis-West Milwaukee School Dist., (242) Dec. 21, 1994 (p. 4)

Christopher W. by the Tomah Area School Dist., (247) Apr. 21, 1995 (p. 6)

See also decisions numbered 257, 383, 395, 404, 405, 419, 428, 441, 492, 499, 506, 510, 513, 514, 542, 555, 593, 599, 600, 616, 626, 634, 640 and 654.

A school board can base an expulsion in part on the hearsay testimony of a school official.

William S. by the Suring School Dist., (98) June 17, 1982 (pp. 2- 3)

Christopher W. by the Tomah Area School Dist., (247) Apr. 21, 1995 (p. 6)

Amanda L. by the Hartford UHS School Dist., (257) Aug. 3, 1995 (pp. 4-5)

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Although a school board should not uncritically admit as fact testimony of questionable veracity, it should not exclude evidence simply because it is hearsay.

John C. B. by the Milwaukee School Dist.,
(116) Oct. 31, 1983 (p. 7)

Michael E. by the Oconomowoc Area School Dist., (212) Dec. 3, 1993 (p. 5)

Hearsay testimony from school administrators alone may constitute sufficient evidence to support an expulsion when there are factors establishing the reliability and probative value of such testimony.

John C. B. by the Milwaukee School Dist.,
(116) Oct. 31, 1983 (pp. 7-8)

Joshua S. by the D.C. Everest School Dist.,
(170) June 22, 1990 (pp. 7-8)

See also decisions numbered 242, 247, 364, 399, 405, 419, 428, 441, 542, 593, 599, 600 and 616.

Hearsay statements from school teachers or staff members are admissible in a school disciplinary hearing and can have sufficient probative force upon which to base, in part, an expulsion (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p.8)

William S. by the Tri-County Area School Bd.,
(132) June 21, 1985 (p. 10)

See also decisions numbered 170, 229, 247, 354 and 381.

A school board has the power to base its decision to expel entirely on the hearsay testimony of school officials, when the school officials were charged with a duty to investigate alleged misconduct and such officials present testimony at the hearing as to statements made to them in the course of their investigation by students who witnessed the conduct.

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Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 9)

William S. by the Tri-County Area School Bd., (132) June 21, 1985 (p. 11)

See also decisions numbered 130, 132, 247, 278 and 626.

The board is authorized to use hearsay statements gathered from pupils in the course of investigation.

Timothy W. by the Greenfield School Dist., (315) March 21, 1997 (p. 6)

The school board is permitted to consider testimony of officials (staff and police officers) containing statements made to them in the course of their investigation by students who witness the conduct.

Michael Ryan H. by the Clinton Community School Dist., (222) Mar. 10, 1994 (p. 6)

Christopher W. by the Tomah Area School Dist., (247) Apr. 21, 1995 (p. 6)

The school board is permitted to consider and base its decision upon the testimony of a school official who relates the result of his investigation, including the statements of other people when there are factors establishing the reliability of probative value of such testimony.

Michael A. W. by Oak Creek School Dist., (499) August 5, 2003

Michael M. by Rib Lake School Dist., (510) April 19, 2004

See also decisions numbered 506, 512, 513, 514, 542, 555, 593, 626, 634, 640 and 654.

The hearsay statement of a detective that his follow-up investigation produced an informant who stated the knife was passed to the student in class is sufficient evidence on which the board could determine that the student possessed the knife at school.

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Ramiro L. by the Westfield School Dist., (217)
Jan. 31, 1994 (p. 5)

But where hearsay evidence relied upon is "speculative and unsubstantiated," it is not clear that such evidence should be received particularly where such evidence is very likely to be prejudicial.

Antonio M. by the Kenosha Unified School Dist., (176) April 18, 1991 (p. 8)

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 15)

The extensive use of hearsay evidence involving speculation without the opportunity for cross-examination raises the possibility of due process deprivations.

Antonio M. by the Kenosha Unified School Dist., (176) April 18, 1991 (p. 9)

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 15)

It must be shown that hearsay testimony of a speculative or unsubstantiated nature was relied on extensively before it would rise to a level of a constitutional deprivation of a due process right.

Jason M. by the Germantown School Dist., (179) June 27, 1991 (p. 8)

SPI suggests that great care is necessary in evaluating whether hearsay testimony should be received. Reliability remains the touchstone of admissibility of hearsay.

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 15)

Before a police informant's information is able to be considered reliable, it must reflect certain "indicia of reliability" which in a regular police case usually means the complaint recites that the informant has provided information in the past which has proven to be accurate and reliable.

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 15)

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SPI cautions districts about reliance on multiple level hearsay from unnamed undercover informants.

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 15)

It is within the discretion of the board to rely upon an undercover officer's investigation at school to take disciplinary action.

Joe B. by Westfield School Dist., (497)
June 10, 2003

SPI cautions board not to make its decision solely on the uncorroborated testimony of another student involved in the incident.

Dale C. by the Central Westosha School Dist., (137)
May 15, 1986 (p. 11)

3. Effect of Admission by Student

Where a student has admitted the misconduct with which he is charged, the function of procedural protections in ensuring a fair and reliable determination of the retrospective factual question of whether the student in fact committed the act with which he is charged is not essential (citing Betts v. Board of Education of Chicago, 466 F.2d 629 [7th Cir. 1972]).

Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (p. 4)

Where parent (student) argued that student's admission was not a knowing admission, SPI determined that school board is in the best position to determine credibility.

Charles E. by the Elkhart Lake-Glenbeulah School Dist., (355)
April 20, 1998

Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence (like without Miranda warnings or parents being present), does not apply to administrative expulsion hearings.

Jeremy B. by the Waukesha School Dist., (395)
Aug. 16, 1999 (p. 8)

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Julia M. by the Hamilton School Dist., (412)
April 11, 2000 (p. 4)

See also decisions numbered 428 and 535.

The pupil's admission against interest is not hearsay.

Michael S. by the South Milwaukee School Dist., (428) Dec. 26, 2000 (p. 4)

Where a pupil admits to the conduct, other witnesses are not required.

Raymond O. by the D.C. Everest Area School Dist., (474) July 22, 2002

Where student argued that his confession was coerced, the board was in the best position to determine credibility.

David S. by the Elk Mound Area School Dist.,
(524) August 26, 2004 (p. 4)

4. Use of Background Information

A school board may not consider allegations of misconduct not included in the notice of hearing mailed to the student for the purposes of determining grounds for expulsion. However, it may consider such allegations in determining whether the interest of the school demands the student's expulsion.

Kelly B. by the School Dist. of Three Lakes.
(100) Aug. 23, 1982 (p. 2, footnote 2)

Joshua S. by the D.C. Everest School Dist.,
(170) May 22, 1990 (p. 7)

But see Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

But if school board considers prior disciplinary history when determining whether or not to expel and prior to disciplinary history is not part of the notice, expulsion will be reversed.

Kevin M. by the Oak Creek-Franklin School Dist., (181) Sept. 13, 1991 (pp. 5-6)

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Academic, attendance and disciplinary records need not be "noticed" if used as background information on the student, as a student, and not as grounds for expulsion.

Joshua S. by the D.C. Everest School Dist.,
(170) May 22, 1990 (p. 7)

Kevin M. by the Oak Creek-Franklin School
Dist., (181) Sept. 13, 1991 (p. 7)

But see Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

Considering that prior academic, disciplinary and attendance records may be relevant to the mandated finding that the district's interest requires expulsion, SPI has stated, "better practice calls for every Notice of Expulsion to include a short provision" mentioning that the board may consider the prior records.

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (p. 13)

See SPI's sample forms for Notice of Expulsion, including the recommended advance notice provision, pp. 20-22.

However, where prior records were used at the hearing but not mentioned in the notice, SPI did not reverse the expulsion decision. At the hearing neither the student nor his parents objected to the practice, expressed surprise, or questioned the accuracy of the prior disciplinary record. Furthermore, there was no suggestion that the prior disciplinary information was erroneous or was relied on by the board. In this case the district was following department precedent. Therefore, SPI found it unnecessary to reverse the school board's decision.

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (p. 14)

It cannot be recommended, however, that the board rely on the parents' failure to object. It seems unfair to hold parents to the same standard as a lawyer in objecting to improper testimony at a hearing.

After reviewing the notice and finding that it, among other things, provided that the student's prior academic, disciplinary and attendance records may be considered by the board should it consider what the appropriate penalty

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should be for the student's actions, SPI stated, "[t]he notice and its service fulfilled the statutory requirements," inferring that this notice had been read into the statute, Section 120.13(1)(c).

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 2)

However, in a later decision, where attendance records were introduced at the hearing but not mentioned in the notice, SPI made no reference to this practice, reversing the expulsion decision on other grounds.

Joseph F. by the Almond-Bancroft School Dist., (191) May 13, 1992 (pp. 2, 5-6)

5. Use of Pupil Records

Section 118.125(4), Wis. Stats., provides that nothing in that statute:

. . . prohibits the use of a pupil's records in connection with the suspension or expulsion of the pupil.

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 6)

If the board provides notice to the pupil that records may be used to determine punishment, the board may use these records.

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

Leo P. by the Whitewater Unified School Dist., (351) March 31, 1998

See also decision numbered 405.

When such notice was given and a new document was provided to the board at the hearing, student's remedy was a request for an adjournment to further investigate the document. The pupil (attorney) did not object and admission of the document was upheld by SPI.

Ben J. by the New Glarus School Dist., (504) Dec. 19, 2003

See also Chapter III. A. 3. b.

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A decision to expunge an expulsion from a pupil's record is solely within the discretion of the board. The board retains authority to require certain behavior or actions before expunging the expulsion from the pupil's record.

Ben J. by the New Glarus School Dist.,
(504) Dec. 19, 2003

6. Use of Police Records

Section 118.127(2) states in part:

...A school district may not use law enforcement officers' records obtained under s. 938.396(1m) as the sole basis for expelling or suspending a pupil or as a sole basis for taking any other disciplinary action, including action, including action under the school district's athletic code, against a pupil.

Secs. 48.396 and 948.396 allow law enforcement agencies to share information with school districts. Section 118.127(2) provides that law enforcement records obtained by the school district may not be the sole basis for expelling or suspending a pupil. As long as the records are not the sole basis for the expulsion, the records may be used.

Derek R. by the Holmen School Dist., (399)
Aug. 20, 1999 (p. 7)

D.P. by the Dodgeand School District Board of Education, (654) October 20, 2009

School Board relies solely on a police officer's incident report, the district has violated Section 118.126(5)(b) and therefore did not comply with the procedural requirements of Section 120.13(1)(c).

D.P. by the Dodgeand School District Board of Education, (654) October 20, 2009

Section 938.396(1)(a)(m) clearly authorizes the police department to release records to the school district if the records concern a juvenile who illegally possessed a dangerous weapon.

Zachary J. C. by Reedsburg School Dist.,

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(508) April 8, 2004

7. Student's Behavior at Home

It may be appropriate for the board to inquire about the student's behavior at home or overall behavior. It may be a factor in considering the length of expulsion.

Tyler R. by Rib Lake School Dist. (473) July 22,
2002

8. Exhibits

All documents considered by the board should be marked as Exhibits and copies should be provided to the pupil and parents.

Matthew C. M. by the Cedarburg School Dist.,
(274) Feb. 14, 1996 (p. 6)

There is no requirement that the district provide copies of hearing exhibits to the pupil and/or parents before the hearing. The district is only required to provide copies of all documents presented to the board and to the pupil and parents as well.

N. K. by the Marshall School Dist., (620) May
15, 2008.

B. S. by Marshall School Dist., (626) July 11,
2008

It is not a procedural violation to show the school board actual evidence (in this case, a knife).

Michael A. W. by Oak Creek School Dist.,
(499) August 5, 2003

SPI review of expulsion is limited to the actual expulsion hearing record. Matters not submitted to the board at the expulsion hearing will not be considered by SPI on appeal.

Omar C. by the Whitewater School Dist., (258)
Aug. 11, 1995

Tony R. by the Lake Geneva Joint No. 1
School Dist., (259) Aug. 11, 1995

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Jennifer C. by the Winter School Dist., (264)
Dec. 6, 1995

See also decisions numbered 314, 319, 406,
411, 413, 420, 423, 430, 431, 432 and 436.

Student and/or parent(s) have affirmative obligation to submit written documents and oral testimony as desired.

Jason J. K. by the Franklin School Dist., (314)
March 21, 1997 (p. 4)

Generally, matters not submitted to the board at the expulsion hearing will not be considered by SPI on appeal.

Jeffrey L. by the New Lisbon School Dist.,
(319) Apr. 8, 1997 (p. 4)

Exhibits presented for the first time during appeal will not be considered by the superintendent. Exhibits must be made a part of the record during the expulsion hearing.

John by the Whitehall School Dist., (406)
February 15, 2000

9. Undercover Officers

It is within the board's discretion to allow an undercover officer to be placed in the school. The use of an undercover deputy sheriff is not unlawful.

James B. by Westfield School Dist., (496) June
10, 2003

Joe B. by Westfield School Dist., (497) June
10, 2003

It is within the discretion of the board to rely upon an undercover officer's investigation at school to take disciplinary action.

Joe B. by Westfield School Dist., (497)
June 10, 2003

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10. New Evidence

Where a parent alleges board should have considered a report not available at the time of the hearing, there was no error on the part of the board in not considering it.

T.P.G. by Franklin Public School Dist., (588)
March 5, 2007

“New evidence” must be submitted to the school board. It may not be raised for the first time on appeal.

Tyler M. by Silver Lake Jt 1 School Dist.,
(511) April 26, 2004

A.B. by the Milwaukee Public School Dist.,
(657) March 4, 2010

11. Absence of Witness

Where no criminal proceeding is pending, it is permissible for the board to consider the absence of a witness as it judges the credibility, reliability and probative value of the testimony of those that did testify.

Vincent R. by Mercer School Dist., (513)
May 7, 2004

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12. Stipulations

Where parents stipulated to the findings and administration did not present additional evidence, there is clearly sufficient evidence to support the findings made by the hearing officer and adoption by the board.

G.M. by Monona School Dist., (628) July 18,
2008

M. Effect of Concurrent Criminal or Juvenile Proceedings

A student-appellant's allegations regarding criminal or other proceedings against him arising out of the same misconduct for which expulsion proceedings were brought are irrelevant to his expulsion from school under sec. 120.13(1)(c), Stats.

Criminal proceedings involve a different quantum of proof. The state must establish guilt beyond a reasonable doubt.

Earl N. by the Milwaukee School Dist., (111)
Mar. 3, 1983 (p. 4)

Courts have consistently held that a school board need not grant a postponement of a suspension or expulsion hearing pending a criminal proceeding that stems from the same conduct.

John C. B. by the Milwaukee School Dist.,
(116) Oct. 31, 1983 (p. 6)

Dustin L. F. by the Altoona School Dist., (432)
April 11, 2001

The decision of a prosecutor to not issue a delinquency petition is not dispositive of issues at an expulsion hearing. A school district is granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Stats., which authority is independent of the prosecutor's decision.

Carlos M. by the West Allis-West Milwaukee
School Dist., (242) Dec. 21, 1994 (p. 4)

The district attorney's decision whether to issue charges is not binding upon the school district.

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Joseph S. by the Oak Creek-Franklin Joint School Dist., (403) Oct. 1, 1999 (p. 4)

Kyle J. W. by the Viroqua Area School Dist., (413) April 27, 2000

Board is not required to postpone an expulsion hearing pending the outcome of court proceedings or police or other outside investigations.

Justin L. F. by the Altoona School Dist., (432) April 11, 2001

N. Effect of Strategic Decisions at Hearing

As a general rule, matters of defense not raised and argued during a hearing are effectively waived and cannot thereafter be argued as a ground for reversal (citing Omernick v. Department of Natural Resources, 100 Wis. 2d 234, 301 N.W.2d 437 [1981]; State v. Conway, 34 Wis. 2d 76, 148 N.W.2d 721 [1967]).

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 5)

Exceptions to the general rule that matters of defense not raised and argued during a hearing are effectively waived and cannot thereafter be urged as a ground for reversal are limited to situations in which questions of law are involved, and all facts necessary to dispose of the question are on the record.

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 6)

Decisions made by student's counsel at an expulsion hearing involving hearing strategy are binding.

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 6)

Decisions involving hearing strategy include, but are not limited to, whether to call or not call a witness, to cross-examine or not cross-examine a witness and whether to introduce or not introduce an exhibit.

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Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (p. 6)

It is the policy of the State of Wisconsin that students cannot drop out and re-enroll in school at a whim. This is so whether the student is handicapped or not (see sec. 118.15[1][c], Stats.). Therefore, a student facing expulsion who embarks on a strategy of dropping out of school and entering the Marines and whose hearing strategy was conducted accordingly cannot start over with a different strategy on appeal when other circumstances intervened to prevent him from achieving his goal.

Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (p. 8)

Matters not raised before the board cannot be raised for the first time on appeal.

Tony R. by the Lake Geneva J1 School Dist., (259)
Aug. 11, 1995

Jennifer C. by the Winter School Dist., (264)
Dec. 6, 1995

See also decisions numbered 406, 411, 413, 420, 423, 430, 431, 432, 436 and 451.

By refusing to attend his hearing, the student has forfeited the opportunity to cross examine witnesses or point out inconsistencies.

Kyle J. W. by the Viroqua Area School Dist., (413)
April 27, 2000

O. Sufficiency, Weight and Credibility

If there is any reasonable view of the evidence which will sustain the board's findings, those findings must be upheld.

Kathleen W. by the Tri-County Area School Bd., (130)
May 10, 1985 (p. 7)

Leslie F. by the Milwaukee Pub. Schools, (136)
Mar. 3, 1986 (p. 11)

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See also decisions numbered 139, 142, 143, 145, 146, 148, 159, 185, 188, 215, 222, 229, 233, 264, 303, 332, 354, 380, 390, 391, 395, 398, 401, 404, 405, 406, 407, 413, 419, 421, 422, 423, 428, 430, 431, 432, 435, 472, 473, 490, 501, 510, 511, 513, 514, 528, 547, 548, 552, 553, 554, 555 and 565.

See decision number 602 where SPI not only fails to follow this principle but decides that evidence is “ambiguous” and states that “a reasonable view of the evidence does not sustain the board’s finding.”

In this case, the student told school authorities that she and her date had had “a couple of beers” as they drove to the prom. The pick-up truck in which she rode contained three empty beer cans in the cab, two cans sitting in the drink holders of the cab and three empty beer cans in the pick-up bed. A so-called “PBT” test was conducted. The test did not provide evidence of “being under the influence” of alcohol as the test was either “negative,” .001, or .0001. Neither was there evidence as to what these results meant. Apparently because there was no evidence of “slurred speech, erratic behavior, or sickness while at school along with evidence of consumption of alcohol” SPI determined that there was not sufficient evidence to show she was under the influence of alcohol and therefore reversed the expulsion.

Evidence that marijuana was confiscated, appeared to be marijuana, student admitted it was marijuana, police tested substance and determined it to be marijuana, sufficient evidence for panel to make determination that substance was marijuana. Physical presentation of marijuana not necessary.

Fredell F. by the Milwaukee Public School Dist., (365) July 2, 1998

Even though one finding of the board is not supported by the evidence, if there is sufficient evidence from which the board could nevertheless conclude that the student repeatedly violated school rules, this is sufficient.

Jennifer C. by the Winter School Dist., (264) Dec. 6, 1995 (p. 4)

Jason Q. by the Hartford Union High School Dist., (272) Feb. 9, 1996 (p. 5)

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See also decisions numbered 290, 307, 323, 324 and 327.

The Board determines the weight to give evidence. A school board's findings will be upheld if any reasonable view of the evidence will sustain them.

J.S. by the Stevens Point School Dist., (634)
January 16, 2009

J.K. by the Germantown School Dist., (636)
March 16, 2009

D.J. by the Germantown School Dist., (638)
April 7, 2009

See also decisions numbered 637, 650, 660 and 665.

It is within the board's discretion to give way to the evidence and arguments as it deems appropriate.

M.M. by the Sheboygan Falls School Dist., (637)
March 20, 2009

Arguments as to the credibility or sufficiency of the evidence are beyond the scope of review by the SPI.

Nancy Z. by the Janesville School Dist., (139)
May 23, 1986 (p. 5)

Roy H. by the Blair School Dist., (159) Sept.
26, 1988 (p. 9)

See also decisions numbered 170, 186, 198, 233, 238, 244, 257, 274, 289, 290, 305, 307, 323, 324, 327, 332, 339, 345, 347, 351, 355, 363, 364, 371, 376, 377, 378, 383, 390, 391, 395, 398, 401, 404, 405, 406, 407, 413, 419, 421, 422, 423, 428, 430, 431, 432, 435, 454, 456, 463, 469, 472, 473, 490, 510, 511, 513, 514, 520, 522, 524, 528, 547, 548, 552, 553, 554, 555, 583, 586, 587, 591, 593, 594, 603, 608, 612, 613, 614, 616, 619, 622, 623, 626, 636, 637, 640, 647, 650, 660 and 665.

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P. Board Deliberations

The presence of school administrative staff during board deliberations after the hearing has concluded and the pupil and parent have been excused raises at least the appearance of partiality.

Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 10)

Bradley Scott P. by the Menasha Joint School Dist., Aug. 21, 1992 (p. 5)

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 8)

See also decisions numbered 214, 268, 453 and 525.

If a board has questions, it is best to reconvene board or panel in front of staff and student and present board's questions.

Alexander B. by Milwaukee School Dist., (453) Feb. 1, 2002

It was not error when staff member entered deliberations to answer board's questions regarding the assignment of student if student were expelled.

Alexander B. by Milwaukee School Dist., (453) Feb. 1, 2002

A board member may leave the hearing and then not participate in the deliberation. All board members who deliberate must have heard all of the evidence.

Shawn C. by the Mauston School Dist., (375) Dec. 29, 1998

The board's consideration of an ex parte memorandum from the district administrator did not violate the student's procedural due process rights because it did not contain new and material information.

Joshua S. by the Madison Metropolitan School Dist., (525) Oct. 20, 2004 (p. 9-10)

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The superintendent or assistant superintendent remained with the board during deliberations, SPI found that decision would not be overturned as there was no evidence that either did anything to influence the board.

Aaron R. by DC Everest School Dist., (472)
July 18, 2002

In spite of the fact that the Milwaukee County Circuit Court found this practice to be satisfactory, I do not agree. The SPI in its decision, and the matter of the expulsion of Aaron R. defers to the Circuit Court decision. I do not agree. It does not matter whether the administration attempted to influence the board during deliberations. It does matter that the process APPEARS to be unfair to the student and his or her parents under these circumstances. How does the involvement of staff with the board during deliberations help the board without hurting the student? If the board has questions, it can call for staff and student to return to the room and ask those questions. The goal here is due process, fairness. It is important for the student and his or her parents to believe that fairness has occurred.

Further, there is probably no record (audiotape or court reporter) during deliberations. Nor is it fair to require the persons not in the room (students and parents) to prove that administration did not attempt to influence the board when student and parent were not present and there is no record of what happened in that room. In my mind fairness requires that staff and parents remain outside of the board's deliberation room. If questions come up during deliberations, both should be called to the room for the purpose of getting those questions answered.

See also Tiffany S. by the Edgerton School Dist., (517) June 21, 2004

Q. Required Board Findings

Section 120.13(1)(c) states in part:

. . . The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed 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, or finds that the pupil engaged in conduct while at school or while

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under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion. In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

Because the SPI's review of an expulsion order is based only on the record, it is imperative that all findings necessary to satisfy the requirements of sec. 120.13(1)(c), Stats., be reflected in the record in some manner or the order must be reversed.

Michael S. by the Milwaukee Pub. School Bd.,
(128) May 10, 1985 (pp. 8-9)

Joshua S. by the D.C. Everest School Dist.,
(170) June 22, 1990 (p. 9)

See also decisions numbered 184, 190, 193
and 228.

But see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 4) (father's waiver of five-day notice was in the record but son's waiver was not; SPI stated, "... though the record does not show it, I will assume that waiver was also made on behalf of the son.")

1. Conduct Warranting Expulsion, i.e. Finding of Specified Conduct Which Meets Criteria of Sec. 120.13(1)(c)

Section 120.13(1)(c) states in part:

. . . The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused

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to be conveyed 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, or finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and . . .

School boards have been granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Stats. The statute mandates a two-part test for determining whether expulsion is permissible in a particular case: initially, it must be determined that the student engaged in misconduct which falls within the alternative statutory grounds for expulsion of repeated refusal or neglect to obey school rules or conduct at school or under school supervision which endangers the property, health or safety of others. If this part of the test is determined in the affirmative, the second part of the test requires that, in view of such conduct, it must appear of record that the interests of the school demand expulsion before expulsion is permissible.

Richard W., Jr. by the Central High School Dist. of Westosha, (122) Sept. 13, 1984 (pp. 4-5)

Nicole P. by the Crandon School Dist., (184) Feb. 7, 1992 (pp. 4- 5)

See also decisions numbered 190, 193, 197 and 228.

Sec. 120.13(1)(c), Stats., does not require a school board to take into account a student's "individual nature" when determining whether a particular act is an expellable offense.

Trevis P. by the Arrowhead School Dist., (121) Sept. 13, 1984 (p. 4)

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Danielle S. by the Kenosha Area School Dist.,
(211) Nov. 2, 1993 (p. 5)

Sec. 120.13(1)(c), Stats., permits a school board to expel a pupil only in those situations in which the board finds the pupil guilty of certain specified conduct and is satisfied that the school's interest demands the pupil's expulsion.

Michael S. by the Milwaukee Public School Board, (128) May 10, 1985 (p. 8)

Chad K. by the Wittenberg-Birnamwood School Dist., (168) May 7, 1990 (p. 5)

See also decisions numbered 170, 190, 197, 200, 228, and 280.

SPI may be willing to infer a finding that board found conduct warranting expulsion.

Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 6)

Better practice requires an explicit finding.

Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 6)

SPI is compelled to reverse the expulsion of a pupil where the basis for the expulsion stated in the order is not a statutory basis. In other words, if the board does not find the pupil guilty of conduct specified in Section 120.13(1)(c), expulsion will be reversed.

Alfred L. by the Oconto Fall School Dist., (338)
September 24, 1997

It is not necessary that all grounds alleged in the notice of hearing be proven. There need only be proof of one of the statutory grounds. Where board found two of three alleged grounds were proven, expulsion proper.

Leo P. by the Whitewater School Dist., (351)
March 31, 1998

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Matt L. by the Merrill Area Public School Dist.,
(381) May 19, 1999

Because the school district is required to provide the pupil advance notice of the statutory grounds under which it intends to proceed, it cannot make its finding based upon different statutory ground for which the student did not receive notice.

Travis J. M by the Deerfield Community School
Dist., (423) Sep. 25, 2000 (p.7)

The board must conclude that the student performed an act which provides statutory grounds for expulsion. Failure to do so will cause reversal of the expulsion.

Nick N. by the Elcho School Dist., (373) Dec. 4,
1998

2. Board's Satisfaction that Best Interest of the School Demands Expulsion

Section 120.13(1)(c) states in part:

. . . The school board may expel a pupil from school whenever it finds . . . (certain specified conduct -- see Chapter IV., Q., 1.) . . . and is satisfied that the interest of the school demands the pupil's expulsion. . . .

School boards have been granted the authority to expel students in accordance with the provisions of sec. 120.13(1)(c), Stats. The statute mandates a two-part test for determining whether expulsion is permissible in a particular case: initially, it must be determined that the student engaged in misconduct which falls within the alternative statutory grounds for expulsion of repeated refusal or neglect to obey school rules or conduct at school or under school supervision which endangers the property, health or safety of others. If this part of the test is determined in the affirmative, the second part of the test requires that, in view of such conduct, it must appear of record that the interests of the school demand expulsion before expulsion is permissible.

Richard W., Jr. by the Central High School
Dist. of Westosha, (122) Sept. 13, 1984 (pp. 4-
5)

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Chad K. by the Wittenberg-Birnamwood School Dist., (168) May 7, 1990 (p. 5)

See also decisions numbered 170, 184, 190, 193, 197, 234 and 280.

Conduct which endangers the health or safety of another student, in the absence of any mitigating circumstances whatsoever, is more than sufficient to establish that the interest of the school demands the pupil's expulsion.

John C. B. by the Milwaukee School Dist., (116) Oct. 31, 1983 (P. 5)

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 11)

See also Brad M. V. by the Boyceville Community School Dist., (233) June 29, 1994 (p. 5)

A school board may not consider allegations of misconduct not included in the notice of hearing mailed to the student, but may consider such allegations in determining whether the interest of the school demands the student's expulsion.

Kelly B. by the School Dist. of Three Lakes, (100) Aug. 23, 1982 (p. 2, footnote 2)

Jennifer P. by the Waukesha School Dist., (226) Apr. 18, 1994 (p. 5)

But see Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 13-14).

A school board is not required by sec. 120.13(1)(c), Stats., to make a finding that the interest of the school demands the student's expulsion, but merely that the board be satisfied that due to its findings of misconduct that the interest of the school demands the student's expulsion.

Susan Marie H. by the Kenosha Unified School Dist., (157) June 28, 1988 (p. 8)

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The board is required to find that the interest of the school demands the pupil's expulsion. An order that included a conclusion "that the interests of the school are best served by expulsion" is satisfactory.

Todd N. by the Elmwood School Dist., (477)
Aug. 22, 2002

The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety, or property of others is more than sufficient to establish that the interests of the school demand expulsion.

D. S. by Cedar Grove-Belgium Area School Dist., (552) July 11, 2005 (p. 6)

Absent a finding that the board is "satisfied that the interest of the school demands the pupil's expulsion," the expulsion will be reversed and the student reinstated.

Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 8)

Jennifer L. by the Siren School Dist., (177) May 14, 1991 (p. 4)

See also decisions numbered 131, 184, 190, 197, 200, 236, 253, 254, 265, 286, 288, 300 and 328.

3. Findings of Fact and Conclusions of Law Not Required

Sec. 120.13(1)(c), Stats. contains no requirement that an expulsion order be accompanied by findings of fact and conclusions of law. Although such an articulation would be desirable, it is not essential to a lawful expulsion under the statutes.

Sean H. by the Milwaukee School Dist., (106)
Feb. 10, 1983 (p. 5)

Sec. 120.13(1)(c), Stats. does not require that a school board state specific findings of fact and conclusions of law in its expulsion order, but only that minutes be kept of the hearing.

Bradley B. by the Spooner School Dist., (107)
Feb. 15, 1983 (pp. 4-5)

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Lay boards of education are not bound by the provisions of Chapter 227, Stats., and need only abide by the specific procedures set forth in sec. 120.13(1)(c), Stats. (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Sean H. by the Milwaukee School Dist., (106)
Feb. 10, 1983 (p. 5)

R. Board Findings and Decision to Expel Is At Discretion of Board

The findings of a school board sitting as the trier of fact in an expulsion hearing are conclusive, and must therefore be upheld by a reviewing body such as the SPI, if any reasonable view of the evidence sustains them (citing State ex rel. v. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 [1976]).

Kathleen W. by the Tri-County Area School Board, (130) May 10, 1985 (p. 7)

William S. by the Tri-County Area School Board, (132) June 21, 1985 (p. 10)

See also decisions numbered 136, 139, 142, 143, 145, 146, 148, 159, 185, and 188.

A school board's findings will be upheld if any reasonable view of the evidence sustains them.

Nicole G. by the Ashland School Dist., (390)
July 1, 1999 (p. 6)

Nathan by the Delevan-Darien School Dist.,
(391) July 23, 1999

See also decisions numbered 395, 398, 401, 404, 405, 406, 407, 413, 419, 421, 422, 423, 428, 430, 431, 432, 435, 520, 522, 524, 538, 547, 549, 550, 553, 554, 555 and 565.

It is within the board's discretion to give weight to the evidence and arguments, as it deems appropriate and to judge the credibility of witnesses.

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Aaron S. by the Tri-Count Area School Dist.,
(522) July 26, 2004 (p. 6)

David S. by the Elk Mound School Dist., (524),
August 26, 2004 (p. 4)

See also decisions numbered 549, 554, 557
and 558.

The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c).

Barrett S. by the Fox Point J2 School Dist.,
(424) Oct. 6, 2000

James A. by the Milwaukee Public School Dist.
(426) Nov. 6, 2000

The decision whether to expel a student is one which is left to the discretion of the board, as long as it acts within the parameters of sec. 120.13(1)(c), Stats.

Ricardo S. by the School Dist. of Wisconsin Rapids, (145) Sept. 5, 1986 (p. 8)

Lavell A. by the Kenosha Unified School Dist.,
(147) Jan. 12, 1987 (p. 8)

See also decisions numbered 148, 150, 301,
and 302.

Because expulsions are considered on a case by case basis, the treatment of other students is not relevant.

Nicole R. by Arcadia School Dist., (480) Nov.
20, 2002

Benjamin Z. by the Marinette School Dist.
(507) March 1, 2004

See also decisions numbered 520, 524, 529,
535, 543, 550 and 582.

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The issue of the evenness and fairness of disciplinary measures imposed by schools is one the SPI is without authority to address.

Roy H. by the Blair School Dist., (159) Sept. 26, 1988 (p. 11)

Douglas S. by the Neenah School Dist., (162) May 23, 1989 (pp. 4- 5)

See also decisions numbered 170, 186, 198, 202, 211, 223, 233, 238, 244, 246, 248, 257, 274, 289, 290, 305, 307, 323, 324, 327, 332, 339, 345, 347, 351, 355, 363, 364, 371, 376, 377, 378, 383, 435 and 453.

Review does not extend to matters such as harshness or duration of expulsion.

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 12)

Rhiannon V. by the Muskego-Norway School Dist., (188) Apr. 21, 1992 (p. 9)

See also decisions numbered 189, 202, 246 and 248.

No error when board failed to take into consideration social, emotional or mental health needs of student (non EEN or sec. 504 student).

Nicole R. by the Granton Area School Dist., (301) Sept. 19, 1996 (p. 5)

See also Chapter VI., D. - Duration and Severity, Harshness.

S. Administrative Recommendations Regarding Expulsion

The Board may consider the administration's recommendation for expulsion.

Chad S. by the Hartford Union High School Dist., (273) Feb. 9, 1996 (p. 5)

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Board need not follow recommendations of administration. The duration of expulsion is a matter left to the discretion of the board.

Brad O. by the Madison Metropolitan School Dist., (246) Mar. 16, 1995 (p. 5)

Rebecca S. by the Janesville School Dist., (248) May 8, 1995 (p. 4)

Ernesto J. G. by the Waukesha School Dist., (269) Jan. 12, 1996 (p. 4)

See also decision no. 626.

Even where administrator testifies that he did not consider repeated attacks on other students as a reason for expulsion, the board may expel for these reasons given proper notice to the student.

Shawn C. by the Mauston School Dist., (375) Dec. 25, 1998

T. Board May Not Retroactively Suspend for Longer Period After Finding Grounds for Expulsion

Once a school board has held an expulsion hearing and has found grounds for the expulsion, the board cannot retroactively order a longer suspension in lieu of an expulsion.

Leslie F. by the Milwaukee Pub. Schools, (136) Mar. 3, 1986 (p. 11)

U. Waiver of Hearing

SPI cautions board to give "careful consideration of all the facts surrounding an incident before making . . . an offer of a waiver to parents and/or pupil"

Dale C. by the Central Westosha School Dist., (137) May 15, 1986 (p. 11)

When pupil signs a written stipulation with the school board and verbally agrees to its modification, the pupil cannot later complain that he was not given a hearing.

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Curtis B. by the Marinette School Dist., (519)
June 25, 2004 (p. 4)

Parents did not appear at hearing upon advice of counsel. This was parents' choice. School is not obligated to delay proceedings because they chose not to participate.

Alex M. by the Racine Unified School Dist.,
(533) February 15, 2005

Pupil did not appear at hearing upon advice of counsel. This was pupil's choice. It does not create a procedural violation.

P. A. by the Janesville School Dist., (630)
September 4, 2008

When parents were given an opportunity at the beginning of a hearing to adjourn the hearing so that the pupil could attend then decided his attendance was unnecessary, waiver of hearing has occurred with respect to the pupil.

I. V. by the Kenosha Unified School Dist., (538)
April 21, 2005

Where parent told school administration that parent and pupil would not attend expulsion hearing and chose to attend a different meeting, right to expulsion hearing was waived. Never alleged that student was physically unable to attend the hearing. No obligation to postpone the hearing especially where postponement was not requested.

B. W. by the Black River Falls School Dist.,
(542) May 26, 2005

V. Joint Hearing

Pupil's request for a joint hearing because criminal charges arising from same facts could be filed jointly denied because joint hearing is not required, is unprecedented and may violate pupil confidentiality if granted.

Aron P. by the Sturgeon Bay School Dist.,
(341) Dec. 17, 1997

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W. By Alternate Decision Makers

(Hearing Officer, Independent Hearing Panel)

Section 120.13(1)(e), Stats. (1996-97), states as follows:

(e) 1. The school board may adopt a resolution, which is effective only during the school year in which it is adopted, authorizing any of the following to determine pupil expulsion from school under subd. 2. instead of using the procedure under par. (c) 3.:

a. An independent hearing panel appointed by the school board.

b. An independent hearing officer appointed by the school board.

2. During any school year in which a resolution adopted under subd. 1 is effective, the independent hearing officer or independent hearing panel appointed by the school board:

a. May expel a pupil from school whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c) 1. or 2.

b. Shall commence proceedings under subd. 3. and expel a pupil from school for not less than one year whenever the hearing officer or panel finds that the pupil engaged in conduct that constitutes grounds for expulsion under par. (c) 2m.

3. Prior to expelling a pupil, the hearing officer or panel shall hold a hearing. Upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. The pupil and, if the pupil is a minor, the pupil's parent or guardian, may be represented at the hearing by counsel. The

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hearing officer or panel shall keep a full record of the hearing. The hearing officer or panel shall inform each party of the right to a complete record of the proceeding. Upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian. Upon the ordering by the hearing officer or panel of the expulsion of a pupil the school district shall mail a copy of the order to the school board, the pupil and, if the pupil is a minor, the pupil's parent or guardian. Within 30 days after the date on which the order is issued, the school board shall review the expulsion order and shall, upon review, approve, reverse or modify the order. The order of the hearing officer or panel shall be enforced while the school board reviews the order. The expelled pupil and, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. An appeal from the decision of the state superintendent may be taken within 30 days to the circuit court of the county in which the school is located. This paragraph does not apply to a school district operating under ch. 119.

Notice that the last paragraph of the statute states:

. . . This paragraph does not apply to a school district operating under ch. 119.

Chapter 119 of the Statutes applies to first-class city school systems (Milwaukee).

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At Section 119.25, Stats., authority is given to first-class city school systems to use an independent hearing panel or an independent hearing officer. With two exceptions, Section 119.25 is identical to Section 120.13(1)(e). Section 119.25 contains the following sentences that are not contained in Section 120.13(1)(e):

. . . No administrator may be designated to participate in an expulsion hearing if he or she was involved in the incident that led to the expulsion proceeding.

* * *

A school board, hearing officer or a panel may disclose the transcript to the parent or guardian of an adult pupil, if the adult pupil is a dependent of his or her parent or guardian under Section 152 of the Internal Revenue Code.

The first sentence is rather confusing. Does the legislature mean that the administrator involved in an incident leading to an expulsion proceeding may not be a witness? This is doubtful. Clearly the legislature intended that the administrator involved in the incident leading to the expulsion proceeding not be a member of the independent hearing panel or be the independent hearing officer appointed to hear the case.

Whatever the legislature intended, it is interesting that the preclusion is applicable to Milwaukee administrators and no other administrators. The sentence is not contained in Section 120.13(1)(e).

The second exception involves transcripts of the record and who may be given a transcript. Both statutes require that, upon request, the hearing officer or panel direct the transcript of the record be prepared and a copy given to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. In Milwaukee, however, the school board, hearing officer or panel may disclose the transcript to the parent of an adult pupil if the adult pupil is a dependent of the parent or guardian under Section 152 of the Internal Revenue Code.

Section 152 of the Internal Revenue Code defines who is a "dependent" for purposes of determining whether that "dependent" may be taken as a personal exemption on an individual income tax return. Should this issue arise, Section 152 should be read in its entirety. The definition of

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"dependent" under Section 152 is quite broad. A "dependent" must be one of the qualifying persons under Section 152 and the person who seeks the exemption must have paid over half of the support for the "dependent" during the tax year.

The statute was enacted in 1987. To date, the following decisions have involved an independent hearing panel within the meaning of Section 119.25, Stats.

Isaac S., II by the Milwaukee School Dist.,
(187) Apr. 21, 1992

Demetris S. by the Milwaukee School Dist.,
(194) June 8, 1992

There is no requirement that the school board delay action on an independent hearing panel's recommendation in order to allow the pupil to appeal the panel's determination to the board.

Alexander B. by Milwaukee School Dist., (453)
Feb. 1, 2002

Failure of the school board to reverse, approve or modify an independent hearing officer's decision within 30 days requires reversal of the expulsion.

D. S. by Racine School Dist., (590) April 23,
2007

Failure of the school board to issue a final decision within thirty days after the date on which the hearing panel issues the expulsion order may unduly delay a pupil's pursuit of appeal rights.

Isaac S., II by the Milwaukee School Dist.,
(187) April 21, 1992 (pp. 9-10)

Statute requires that independent hearing panel or independent hearing officer be authorized annually and effective only during the school year in which it is adopted. Failure to follow this requirement is procedural error and will require reversal.

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 9)

Joshua S. by the Madison Metropolitan School
Dist., (525) Oct. 20, 2004 (p. 5)

Chapter IV – Hearing

The district's administrator(s) are probably not "independent" but in the meaning of the statute. SPI suggests that districts "which can afford to" use a retired school administrator, business manager, personnel director, pupil services director, teacher, private lawyer, volunteer retired judge, arbitrator or other qualified person with hearing examiner training whose independence is beyond question.

Ryan G. by the Sparta Area School Dist., (325)
May 19, 1997 (p. 14)

Comment: SPI seems very considerate of school board costs with the foregoing comment. It is hard to conceive of circumstances under which an employed school district administrator could be "independent" of his contemporaries and board when acting as a hearing officer. Neither is it likely that he could investigate the circumstances, develop the facts and then act as an "independent" hearing officer. The statute requires an "independent" hearing officer.

I do not believe that any staff person should be involved as a hearing officer or member of a hearing panel with respect to a student of his or her district. The whole concept of independence is lost when one of the persons who is requesting the expulsion is an "independent" hearing officer.

In the same manner, the statute requires an independent hearing panel appointed by the school board. May one or more board members be an "independent hearing panel?" Certainly the board members are independent of staff. They are not, however, independent of the board and the statute seems to call for this. Two or three board members are hardly "independent" of the school board itself. It is probably better to have panel members and/or hearing officers be persons wholly unassociated with the school district, i.e. not employed by the district or a member of the board.

The statute does not dictate the size or composition of the hearing panel. The panel must simply be independent.

Joanna J. by the Milwaukee Public School
Dist., (359) May 22, 1998

No statutory requirement that independent hearing panel have three members. Two panelists are sufficient.

Chapter IV – Hearing

Section 120.13(1)(e) authorizes the use of an independent hearing officer or independent hearing panel to hear expulsion cases *instead* of using the board procedure specified in 120.13(1)(c)3. The same statute requires that

“Within 30 days after the date on which an *expulsion* is issued by the hearing officer or panel, the school board shall review expulsion order and shall, upon review, approve, reverse or modify the order.”

The hearing officer did not order expulsion but did order suspension (13 days). Board was not allowed to reverse an expulsion order because such power exists only with respect to “an expulsion.” SPI suggests that this could be allowable if board incorporates or references its plenary powers as those powers relate to the use of hearing officers at expulsion hearings.

Drew K. by the Sparta Area School Dist., (443)
Sept. 17, 2001

Brian P. by the Sparta Area School Dist., (444)
Sept. 17, 2001

Zachariah I. by Sparta Area School Dist., (446)
Oct. 16, 2001

A hearing officer is in the best position to resolve conflicts and testimony and interpret facts. It is within the hearing officer’s discretion to give weight to the evidence and arguments as he or she deems appropriate and to judge credibility of witnesses.

Aaron R. by DC Everest School Dist. (472)
July 18, 2002

Board does not have the statutory authority to use both the independent hearing officer option and the board hearing procedure under § 120.13(1)(c)(1) in the same case.

Joshua S. by the Madison Metropolitan School Dist., (525) Oct. 20, 2004 (p. 8)

A school board must review a hearing officer’s decision *only if the hearing officer has ordered expulsion*. If the hearing officer did not order expulsion, the school board has no authority to review his decision.

Chapter IV – Hearing

Drew K. by the Sparta Area School Dist., (443)
Sept. 17, 2001

Brian P. by the Sparta Area School Dist., (444)
Sept. 17, 2001

Zachariah I. by the Sparta Area School Dist.,
(446) October 1, 2001

Madison Metropolitan School District and
Joshua S. vs. Elizabeth Burmaster, State
Superintendent of Public Instruction, 2006 WI
App 17, 288 Wis. 2d 771, 709 N.W.2d 73

The administration is only required to notify the pupil and his parents that the expulsion will remain in effect while the order is reviewed by the school board. Administration is not required to notify the pupil or his parents of the date, time or place of the school board meeting.

R. W. by the Kenosha School Dist., (631)
September 25, 2008

X. Minutes/Record

Section 120.13(1)(c), Stats., states in part:

. . . The school board shall keep written minutes of the hearing. . . .

Section 120.13(1)(e)(3), Stats., states in part:

. . . Upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian. . . .

A school board must, therefore, keep minutes. When a school board uses an independent hearing officer or panel, however, that officer or panel must, upon request, provide a transcript of the proceedings. This requirement, as a practical matter, requires that a hearing officer or a panel use, at the very least, a recording device that will clearly allow a stenographer to prepare a transcript when requested.

Chapter IV – Hearing

The following discussion has application to school boards and not hearing officers or panels.

Sec. 120.13(1)(c), Wis. Stats., requires board to keep minutes of an expulsion hearing. At a minimum, minutes must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct and what decisions or actions the board took based upon the evidence presented. If there is a reasonable view of the evidence submitted which supports the board's findings, those findings will be upheld.

Nathan W. by the Wilmot Union High School Dist., (296) July 10, 1996 (p. 4)

James R. by the West Bend School Dist., (396) Aug. 17, 1999

See also decisions numbered 398, 399, 435, 537, 613, 644, 650, 655, 659 and 660.

NOTE: It is suggested that (a) the board follow whatever requirements as to minutes it may have imposed on itself, e.g. board rules, Robert's Rules of Order (see Chapter III, C.), (b) the minutes reflect those protections that must be provided to the student, and (c) required board findings (Chapter IV, M.)

A written transcript is highly preferred and is a better reflection of the hearing process. The statute does not require, however, that a written transcript be provided for review on appeal.

The statute does require that the school board keep minutes, however.

Tracy M. by the Random Lake School Dist., (244) Jan. 11, 1995 (p. 4)

The statute requires only written minutes. There is no error in not providing an audio tape or transcript.

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

J. H. by the Nekoosa School Dist., (629) July 11, 2008

Chapter IV – Hearing

SPI has outlined how specific minutes must be. Where board meets those requirements, minutes (even though sparse) are sufficient if they allow a meaningful review of the hearing.

Raymond K. by the Phillips School Dist., (435)
June 25, 2001

While the audiotape or transcript is very helpful in the superintendent's review, it is not required. The statute only requires that the board keep minutes. Because the board took adequate minutes, the quality of the audiotape is not relevant.

Will F. by the Lake Holcombe School Dist.,
(407) Feb. 21, 2000 (p. 2, footnote 1)

D. J. S. by the Hartford Union High School
Dist., (550) July 8, 2005

It is not required that every statement of every board member or participant be reflected in the minutes.

D. L. by the Wheatland School Dist., (613)
March 27, 2008

The minutes submitted are insufficient to allow a meaningful review. However, there was an audiotape made of the hearing that forms a record for a meaningful review. The superintendent cautions school districts against relying solely on audiotape recordings. Such recordings are frequently inaudible and therefore useless in determining what occurred at the hearing.

John L. by the Greenfield School Dist., (418)
June 26, 2000 (p. 2, footnote 1)

Dustin L. F. by the Altoona School Dist., (432)
April 11, 2001 (p. 2, footnote 1)

See also decisions numbered 396, 433, 490
and 491.

Where the district fails to maintain written minutes of the expulsion hearing thereby making it impossible to determine whether evidence was submitted supporting the findings necessary to permit expulsion, reversal is required.

Chapter IV – Hearing

Douglas G. by the New London School Dist.,
(228) Apr. 29, 1994 (p. 4)

Alfred L. by the Oconto Fall School Dist., (338)
September 24, 1997

Wis. Stats. § 120.13(1)(c)3 requires the school board to keep written minutes of the hearing, it does not require an audiotape of the hearing. The minutes provide adequate record for review. Therefore, even if the audiotape is incomplete, there is no statutory violation.

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005 (p. 5)

Where minutes (record) contain no indication of the evidence or information presented to support the allegations of misconduct, the expulsion will be reversed. Records (minutes?) must contain some indication as to the evidence supporting the allegations.

Nathan W. by the Wilmot Union High School Dist., (296) July 10, 1996 (p. 5)

Phoua X. by St. Francis School Dist. Bd. of Education (465) April 28, 2002

See also decision numbered 624.

There is no statutory explanation of how detailed hearing minutes must be. Minimally, the record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct and what decision or action the board took based upon the evidence presented. If they do not, they are insufficient.

Cross-examination is a critical right. It is better practice to identify clearly which witness has testified and when the opportunity for cross-examination was afforded.

Michael L. by the Waukesha School Dist.,
(239) Sept. 20, 1994 (pp. 4-5)

Although the transcript is not a verbatim stenographic transcript, the record in this matter is certainly adequate to permit meaningful review of the board's action.

Chapter IV – Hearing

Timothy R. by the DePere Unified School Dist.,
(318) Apr. 3, 1997 (p. 4)

Even though transcript of hearing and minutes do not reflect everything that occurred at the hearing, SPI concluded board could make findings based on police officer testimony and police report which was part of the record.

Daniel A. by the Mauston School Dist., (324)
May 8, 1997 (p. 3, 4)

The board is required to keep written minutes. In their place, an audible audiotape is sufficient if of satisfactory quality to allow a meaningful review of the hearing.

Donald K. by Little Chute Area School Dist.,
(490) April 22, 2003

NOTE: It is recommended that a court reporter be used in every expulsion hearing. Obviously, the reporter would not be present during the board's deliberations.

SPI must have a record upon which to decide appeals. While no statutory requirement exists that a court reporter be present, certainly a court reporter's transcript would be the best recording of what actually happened at the hearing. The board need not order a transcript of the proceedings unless an appeal is taken. If appeal is taken, the transcript would be available and very helpful to all parties concerned.

At the very least, a tape recording should be made of the hearing (but is not required by statute). To the extent that a board relies on its secretary's minutes, a successful appeal may be jeopardized by an inaccurate or incomplete record.

The United States District Court for the Eastern District of Wisconsin has twice held that an expulsion must be reversed and the student reinstated because of an inadequate record.

The decisions are unpublished. Copies may be obtained from the Coordinator of Employee Services for the Racine Unified School District.

The school board is not required to include a motion approving the minutes.

Chapter IV – Hearing

B. S. by Marshall School Dist., (626) July 11,
2008

Y. Time Within Which Board Decision on Expulsion Must be Made

There is no time limit on when a decision must be made after a hearing.

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 5)

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (p. 5)

L. F. by the Mauston School Dist., (583)
January 18, 2007

See also decisions numbered 173 and 193.

Z. Transcript

Section 120.13(1)(e) requires that a transcript be prepared and given to the pupil and his/her parent only when the board uses an independent hearing officer or panel to hear the expulsion hearing. If the board hears the expulsion, it is not required to prepare a transcript.

B. S. by Marshall School District, (626) July 11, 2008

V. Conduct Warranting Expulsion

A. Generally

The procedural requirements set out in Sec. 120.13(1)(c), Stats., are independent of the case law discussions of due process and may well exceed the protections required by a constitutional due process analysis.

Michael S. by the Milwaukee Public School Board, (128) May 10, 1985 (p. 8)

B. Repeated Violations of Disciplinary Regulations

Section 120.13(1)(c), Stats., states in part:

. . . The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, ... and is satisfied that the interest of the school demands the pupil's expulsion. . . .

Permits expulsion upon a finding of repeated refusal to obey school rules but not on the basis of a single refusal.

Randy H. by the Central/Westosha UHS School Dist., (204) Apr. 6, 1993 (p. 5)

Matthew C. M. by the Cedarburg School Dist., (274) Feb. 14, 1996 (p. 7)

See also decisions numbered 338, 377, 421 and 481.

A district may expel for a single refusal to obey school rules which includes conduct that endangers the health, property or safety, but it must allege, prove and find that such is the case.

Randy H. by the Central/Westosha UHS School Dist., (204) Apr. 6, 1993 (p. 5)

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (pp. 8- 9)

Chapter V - Conduct Warranting Expulsion

See also decisions numbered 223 and 377.

Where the notice alleges both conduct endangering property, health or safety of others, and repeated refusal and neglect to obey rules - only the former needs to be found to support a decision to expel.

Brad M. V. by the Boyceville Community School Dist., (233) June 29, 1994 (p. 6)

Matthew C. M. by the Cedarburg School Dist., (274) Feb. 14, 1996 (p. 7)

Where expulsion is based on repeated violations of school rules, record should contain evidence that student has been provided with a list of those rules and the consequences for violating them.

Antonio M. by the Kenosha Unified School Dist., (176) April 18, 1991 (p. 8)

Hope B. by the Randolph School Dist., (225) Apr. 12, 1994 (p. 4)

See also decisions numbered 266 and 494.

One possession of marijuana and one use of marijuana constitute two violations of school rules.

Two violations of school rules constitute repeated violation of school rules within the meaning of Section 120.13(1)(c).

William S. by the Suring School Dist., (98) June 17, 1982 (pp. 2- 3)

Jesse M. K. by the Tri-County Area School Dist., (266) Jan. 2, 1996 (p. 7)

See also decisions numbered 310 and 317.

Two acts of defiance constitute repeated violation of school rules.

Russell T. by the School Dist. of Tigerton, (99) June 17, 1982 (p. 2)

Chapter V - Conduct Warranting Expulsion

Tattoos which the board determined to be inappropriate, profane and violent continuously worn by a student who refused to cover them up constituted repeated refusal to obey school rules.

H. H. by the West Allis School Dist., (571) April 21, 2006

A school board may expel a student for repeated violations of school rules despite the fact that the school imposed less drastic disciplinary measures for each individual violation.

James M. by the Webster School Dist., (112) May 9, 1983 (p. 3)

Eugene N. by the Flambeau School Dist., (113) May 9, 1983 (p. 3)

See also decisions numbered 114, 115, 117 and 149.

It is within a school board's statutory authority to establish regulations imposing disciplinary measures for the failure of a student to serve detentions from a prior year, and the board can expel a student for violations of such regulations.

Robert M. by the Kiel School Dist., (149) April 30, 1987 (p. 6)

A school official's ejection of a student from a school building after school hours does not constitute grounds for reversal of the student's expulsion, regardless of whether the school has specific regulations requiring students to be out of the building at a certain time or not.

Robert M. by the Kiel School Dist., (149) April 30, 1987 (p. 7)

Insubordination may be a rule violation and constitute one of repeated violations of school rules.

Justin O. by the Monona Grove School Dist., (332) Sept. 4, 1997 (p. 5)

Since the district did not allege that the pupil engaged in repeated violations of school rules, it is irrelevant whether his conduct violated a school policy and whether the pupil had notice of the school policy.

Chapter V - Conduct Warranting Expulsion

John by the Whitehall School Dist., (406) Feb. 15, 2000 (p. 8)

Jamie L. W. by the Hudson School Dist., (419) June 15, 2000 (p. 5)

C. Bomb Threats

Section 120.13(1)(c), Stats., states in part:

(c) The school board may expel a pupil from school whenever it finds ... that a pupil knowingly conveyed or caused to be conveyed 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 ... and is satisfied that the interest of the school demands the pupil's expulsion....

A few decisions have involved students making bomb threats. They are:

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 1)

Glenn P. by the Wauwatosa School Dist., (135) Feb. 24, 1986 (p. 2)

See also decisions numbered 395, 401, 403, 413, 419, 422, 423 430, 434, 540, 557, 560 and 569.

None of these, however, discusses this portion of the statute.

Neither SPI nor courts have ever required district to provide proof that pupil was advised of school policy or rules when the expulsion is based on a bomb threat or conduct endangering the property, health or safety of others.

Jamie L. W. by the Hudson School Dist., (419) June 15, 2000

Travis J. M. by the Deerfield Community School Dist., (423) Sept. 25, 2000

Chapter V - Conduct Warranting Expulsion

NOTE: The Wisconsin Court of Appeals found that it was reasonable for the trial court to find that the statement "bomb" on an email constitutes a bomb threat. *State v. Jacob J.B.*, 2001 WI App 121, 244 Wis. 2d 288, 628 N.W.2d 438 (unpublished opinion).

D. Endangering the Health, Safety or Property of Others

Section 120.13(1)(c), Stats., states in part:

(c) The school board may expel a pupil from school whenever it ... finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, ...and is satisfied that the interest of the school demands the pupil's expulsion....

The word "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury. These terms embrace the notion of wrongful acts, or actions which are detrimental or involve loss or damage.

Michaelene J. by the Washington Island School Dist., (165) Aug. 1, 1989 (p.6)

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 11)

See also decisions numbered 263, 266, 390, 397, 406, 421, 431, 436, 460, 532, 552, 554, 583, 621, 638 and 665.

"Property" means not only tangible property but also intangible property such as data, computer programs and supporting documentation.

Michaelene J. by the Washington Island School Dist., (165) Aug. 1, 1989 (p. 7)

Chapter V - Conduct Warranting Expulsion

"Property of others" means property of anyone else including the school.

Michaelene J. by the Washington Island School Dist., (165) Aug. 1, 1989 (p. 7)

Neither SPI nor courts have ever required district to provide proof that pupil was advised of school policy or rules when the expulsion is based on a bomb threat or conduct endangering the property, health or safety of others.

Jamie L. W. by the Hudson School Dist., (419) June 15, 2000

D. S. by the Cedar Grove – Belgium Area School Dist., (552) July 11, 2005

SPI has repeatedly upheld expulsions when only the threat of harm is present.

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005 (p. 6)

The following conduct has been found by SPI to constitute conduct which endangers the property, health or safety of others. In some of the cases, the board's expulsion was overturned on other grounds, however.

Possession of a weapon:

Christopher F. by the Milwaukee School Dist., (143) July 2, 1986 (p. 9)

Kyle M. by Marshall School Dist., (447) Dec. 11, 2001

See also decisions numbered 499, 503, 508, 514, 515 and 659.

Lying to school administration about possessing a weapon on school grounds:

Lyle S. by the Whitewater School Dist., (378) April 15, 1999

Vadim S. by the Greenfield School Dist., (352) April 7, 1998

Chapter V - Conduct Warranting Expulsion

Possession of a toy gun or “look-alike gun”:

D. N. by the Germantown School Dist., (586)
February 6, 2007

D. L. by the Wheatland Center School Dist.,
(613) March 27, 2008

See also decision no. 639.

Possession of a gun on school premises:

Lenny R. G. by the Madison Metropolitan
School Dist. Board of Education, (207) May 17,
1993 (p.2)

Eric P. by the Tomah Area School Dist. Board
of Education, (210) August 12, 1993 (p.2)

See also decisions numbered 237, 348, 377,
426, 427, 508, 547 and 659.

Allowing another student to conceal a gun and bullets in student's locker:

Rhiannon V. by the Muskego-Norway School
Dist., (188) Apr. 21, 1992 (p. 5)

Detonating a pipe bomb and possessing pipe bombs, explosive-making materials, internet downloads related to bomb making, and a highlighted school map.

Alex M. by Racine Unified School Dist., (533)
Feb. 15, 2005 (p. 2)

Pointing a weapon:

Christopher F. by the Milwaukee School Dist.,
(143) July 2, 1986 (p. 9)

Julius T. by the Milwaukee Public School Dist.,
(427) Dec. 7, 2000

Possession of a loaded gun on a school bus and in a locker at school:

Chapter V - Conduct Warranting Expulsion

Jesse K. by Joint Dist. No. 2, (131) June 17, 1985 (p. 6)

Brandishing a loaded handgun on the way to school:

Stephanie T. by the Milwaukee Public School Dist., (348) March 3, 1998

Shannon W. by Shorewood School Dist., (515) May 25, 2004

Possession of an unloaded BB gun at school and on a school bus:

Demetris S. by the Milwaukee School Dist., (194) June 8, 1992 (p. 3)

Possession of completely inoperable pellet gun (due to absence of CO-2 cartridge):

Jack P. by the Crandon School Dist., (229) May 3, 1994 (p. 6)

Possession of a "starter gun:"

Leslie F. by the Milwaukee School Dist., (136) Mar. 3, 1986 (pp. 7-8, 10)

Passing of a "starter gun" to another student:

Leslie F. by the Milwaukee School Dist., (136) Mar. 3, 1986 (p. 8)

Possession of a weapon off school grounds with an intent to deliver weapon to a friend knowing weapon would be brought onto school grounds without notifying school officials that weapon was on school grounds:

Kyle M. by Marshall School Dist., (447) Dec. 11, 2001

Possession of live ammunition on school grounds:

Alec J. by the Hartford Jt. #1 School Dist., (405) Jan. 3, 2000

Chapter V - Conduct Warranting Expulsion

Zachary J. C. by Reedsburg School Dist., (508)
April 8, 2004

Displaying a small, sharp screwdriver brought to school:

Christopher P. by the Shorewood School Dist.,
(192) May 18, 1992 (p. 3)

Possession of a knife on school premises:

Jesse M. K. by the Tri-County Area School
Dist., (266) Jan. 2, 1996 (p. 6)

Stacey R. by the Milwaukee School Dist., (362)
June 1, 1998

See also decisions numbered 376, 378, 440,
464, 499, 503, 507, 514, 549, 551, 559, 606,
641 and 651.

Possession and use of a knife:

Ericka T. by Milwaukee School Dist., (455)
Feb. 13, 2002

Possession of a "butterfly" knife on school premises:

Shane M. B. by the Green Bay Area Public
School Dist., (190) Apr. 21, 1992 (pp. 2-3)

Possession of a spring-loaded knife on school premises:

Brian V. by the Shorewood School Dist., (195)
June 8, 1992 (p. 3)

Possession of a single blade hunting knife where student argued that in a rural school district such a knife is not a dangerous weapon:

Bradley F. by the Tri-County Area School Dist.,
(240) Nov. 30, 1994 (p. 4)

Possession of a hunting knife even though board made no finding that student intended to harm another:

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Bradley F. by the Tri-County Area School Dist.,
(240) Nov. 30, 1994 (p. 4)

Possession of four knives on school bus:

Travis M. by the Tri-County Area School Dist.,
(241) Dec. 8, 1994 (p. 2)

Confronting another student while possessing a knife:

Lyle S. by the Whitewater School Dist., (378)
April 15, 1999

Jack M. by Mercer School Dist., (514)
May 7, 2004

See also decision numbered 538.

Possession of a bladed tool:

Collin M. F. by Beloit Turner School Dist., (537)
April 13, 2005

Planning and conspiring to obtain a pistol for the purpose of killing another student and/or collecting debts:

Robert S. by the Milton School Dist., (380) May
12, 1999

Possessing a razor blade at school:

Fredell F. by the Milwaukee Public School
Dist., (365) July 2, 1998

David D. by the Central High School Dist. of
Westosha, (429) Jan. 25, 2001

See also decision numbered 514.

Possessing a utility knife in a classroom:

James D. by the Greenfield School Dist., (352)
April 7, 1998

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Tyler M. by Silver Lake Jt 1 School Dist., (511)
April 26, 2004

Setting off firecrackers near another person's head:

Travis V. by the Waterloo School Dist., (144)
July 2, 1986 (p. 7)

Lighting a firecracker in the school building:

Jesse F. by the Stanley-Boyd School Dist.,
(189) Apr. 21, 1992 (pp. 3-4)

Lighting a pipe bomb and throwing it out the back door of the school:

Jerrett N. by the Baraboo School Dist., (183)
Dec. 23, 1991 (pp. 2, 6)

Throwing a pair of sewing shears across school room:

Roy H. by the Blair School Dist., (159) Sept.
16, 1988 (p. 9)

Throwing scissors in class:

Joseph F. by the Almond-Bancroft School Dist.,
(191) May 13, 1992 (p. 3)

Striking a principal:

E.H. by the West Allis School Dist., (661) May
14, 2010

Striking a teacher:

Brandon G. by the West DePere School Dist.,
(160) Apr. 27, 1989 (p. 7)

Shoving security officer:

Vadim S. by the Madison Metropolitan School
Dist., (368) July 29, 1998

Battery to a school district staff person:

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Isaac S., II by the Milwaukee School Dist.,
(187) Apr. 21, 1992 (pp. 2, 4)

Jakeiya C. by Greenfield School Dist., (493)
May 6, 2003

Throwing pencil at a teacher:

Lavell A. by the Kenosha School Dist., (147)
Jan. 12, 1987 (p. 6)

Stabbing student with a pencil:

Joshua S. by Madison Metropolitan School
Dist., (525) Oct. 20, 2004

Bumping administrator twice with front of car:

Clifton V. by the Eau Claire Area School Dist.,
(267) Jan. 5, 1996 (p. 4)

Assaulting an assistant principal:

Lavell A. by the Kenosha School Dist., (147)
Jan. 12, 1987 (p. 6)

Susan Marie H. by the Kenosha School Dist.,
(157) June 18, 1988 (p. 6)

See also decision no. 662.

Assaulting and injuring a teacher:

Nathan N. by the Hudson School Dist., (163)
June 5, 1989 (p. 9)

Use of force with teacher:

Eric K. by the Rosholt School Dist., (142) June
18, 1986 (p. 6)

Threatening teachers:

Lavell A. by the Kenosha School Dist., (147)
Jan. 12, 1987 (p. 6)

Chapter V - Conduct Warranting Expulsion

Susan Marie H. by the Kenosha School Dist., (157) June 18, 1988 (p. 6)

Eric K. by the Rosholt School Dist., (142) June 18, 1986 (p. 6)

See also decisions numbered 391, 399, 405, 416, 437 and 656.

Verbal confrontation with another student that resulted in a physical fight:

Michael J. by Nicolet Union High School Dist., (456) March 4, 2002

Jakeiya C. by Greenfield School Dist., (493) May 6, 2003

See also decision numbered 514.

Fight with another student:

Lon Greg S. by the Port Washington-Saukville School Dist., (148) Feb. 10, 1987 (pp. 5-6)

Richard W., Jr. by the Central High School Dist. of Westosha, (122) Sept. 13, 1984 (p. 5)

See also decisions numbered 440, 456, 493, 514, 529, 562, 647 and 662.

Battery to another student:

Nathan W. by the Wilmot Union High School Dist., (360) May 27, 1998

Barrett S. by the Fox Point J2 School Dist., (424) Oct. 6, 2000

See also decisions numbered 440, 446, 541, 561, 566 and 634.

Threatening another student:

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Stephanie T. by the Milwaukee School Dist.,
(348) March 3, 1998

Nathan by the Delavan-Darien School Dist.,
(391) July 23, 1999

See also decisions numbered 464, 397, 404,
405, 410, 417, 419, 420, 424, 432, 437, 555
and 656.

Threatening students and teachers:

Nathan by the Delavan-Darien School Dist.,
(391) July 23, 1999

Travis S. by the Spencer Public School Dist.,
(402) Sep. 13, 1999

See also decisions numbered 405, 437, 583,
642, 648 and 656.

Phone calls threatening principal and school employees, and
a bomb threat:

C. T. by the Suring School Dist., (543) May 26,
2005

W. T. by the Suring School Dist., (544) May 26,
2005

A bomb threat:

R. N. by the Kiel Area School Dist., (603)
August 28, 2007

J.F. by South Milwaukee School Dist., (648)
July 27, 2009.

See also decision no. 658.

Threatening to bring a gun to school and kill a student:

S. B. by the Germantown School Dist., (572)
May 1, 2006

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Writing a kill/hit list:

Nathan by the Delavan-Darien School Dist.,
(391) July 23, 1999

Damis M. by the Cadott School Dist., (397)
August 20, 1999

See also decisions numbered 402, 405, 407,
424 and 667.

Possession and use of a padlock as a weapon:

Nickenia S. by the Milwaukee Public School
Dist., (528) Jan. 11, 2005

T. J. by the Madison Metropolitan School Dist.,
(553) July 15, 2005

Hitting another student in the face with fist:

Roy H. by the Blair School Dist., (159) Sept.
26, 1988 (p. 9)

Swinging student by arms and legs on third floor landing as if to throw
down stairs:

Roy H. by the Blair School Dist., (159) Sept.
26, 1988 (p. 9)

Initiating a food fight:

Peter J. by the Hamilton School Dist., (129)
May 10, 1985 (p. 4)

Participating in gang activity:

M. T. R. by the Janesville School Dist., (563)
Jan. 3, 2006

Spraying a toxic chemical in the halls of the high school:

Kristin J. P. by the Mukwonago Area School
Dist., (185) Feb. 21, 1992 (pp. 2, 8)

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Attempt to purchase a controlled substance:

C. S. by the Oconto Falls School Dist., (589)
April 17, 2007

One-time possession of controlled substance:

Justin M. by the Fort Atkinson School Dist.,
(263) Dec. 5, 1995 (p. 4)

D. S. by the Cedar Grove – Belgium Area
School Dist., (552) July 11, 2005

Possession of a controlled substance:

Andrew C. by the Milwaukee Public School
Dist., (386) June 11, 1999

Nicole G. by the Ashland School Dist., (390)
July 1, 1999

See also decisions numbered 393, 406, 408,
412, 415, 421, 425, 431, 435, 436, 438, 439,
443, 444, 445, 460, 470, 471, 492, 500, 512,
516, 531, 558, 644, 654, 663 and 669.

Sale of controlled substance:

Dustin L. by Wisconsin Rapids School Dist.,
(470) June 27, 2002

Todd N. by Elmbrook School Dist., (477)
August 22, 2002

See also decisions numbered 495, 498, 512,
531, 558, 565, 635 and 644.

Under the influence of a controlled substance while on school premises:

Brian C. by the Sheboygan Area School Dist.,
(158) Sept. 9, 1988 (p. 5)

Julia M. by the Hamilton School Dist., (412)
April 11, 2000

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See also decisions numbered 435, 475, 481, 485, 486, 492, 494, 500, 545, 552, 554, 614 and 620.

There is no requirement that “under the influence” of a controlled substance be to a certain level of intoxication. The board need only find that the conduct endangered others.

D. S. by the Cedar Grove – Belgium Area School Dist., (552) July 11, 2005

Use of marijuana in parked car in student parking lot:

Michael E. K. by Burlington Area School Dist., (449) Feb. 13, 2002

D. P. by the Burlington Area School Dist., (554) July 29, 2005

One time possession of marijuana:

Anita P. by the Janesville School Dist., (124) Feb. 5, 1985 (p. 7)

Raymond M. by the Siren School Dist., (156) Apr. 19, 1988 (pp. 6-7)

Charles E. by the Elkhart Lake-Glenbeulah School Dist., (355) April 20, 1998

See also decisions numbered 337, 346, 349, 350, 354, 361, 365, 371, 374, 379, 386, 390, 393, 408, 412, 421, 425, 431, 436, 449, 450, 451, 453, 460, 461, 466 and 467, 480, 481, 482, 488, 489, 502, 504, 520, 522, 536, 537, 556, 564, 608, 614, 615, 626, 637, 638, 640 and 649.

Possession of marijuana on multiple occasions:

Sabrina T. by Menominee Indian School Dist., (468) May 29, 2002

Possession of very small amount of marijuana:

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Joshua S. by the Beloit-Turner School Dist., (307) Jan. 14, 1997 (p. 5)

Steven S. by the Merrill Area School Dist., (311) Feb. 7, 1997 (4)

See also decisions numbered 390, 393, 421, 490, 494, 638 and 640.

Delivery or transfer of marijuana to another student:

Douglas S. by the Neenah School Dist., (162) July 2, 1986 (p. 5)

Kelly B. by the Three Lakes School Dist., (100) Aug. 23, 1982 (p. 2)

See also decisions numbered 386, 390, 412, 477, 480, 482, 490, 496 and 636.

Bringing marijuana to school and putting it into lockers of other students:

Michael J. B. by the Palmyra-Eagle School Dist., (151) July 27, 1987 (p. 4)

Possession of the materials to construct a marijuana cigarette and rolling a marijuana cigarette at school:

B. S. by Marshall School Dist., (626) July 11, 2008

Sale of marijuana:

Teresa Lynn by the Janesville School Dist., (120) June 1, 1984 (p. 4)

Trevis P. by the Arrowhead School Dist., (121) Sept. 13, 1984 (p. 4)

See also decisions numbered 145, 150, 412, 438, 466, 477, 482, 490 and 496.

Sale of marijuana off school grounds which marijuana found its way to school via purchaser:

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Jamie P. by Central/Westosha Union High School Dist., (462) March 26, 2002

Intent to deliver marijuana:

Bobby H. by Elmbrook School Dist., (488) March 21, 2003

Joe B. by Westfield School Dist., (497) June 10, 2003

See also decisions numbered 542, 556, 649, 654 and 663.

Smoking marijuana:

Curtis O. by St. Croix Central School Dist., (489) April 17, 2003

Hannah W. by River Falls School Dist., (502) Dec. 12, 2003

See also decisions numbered 554 and 638.

Delivery of a controlled substance:

David G. by the Westosha School Dist., (109) Feb. 25, 1983 (p. 3)

Andrew C. by the Milwaukee Public School Dist., (386) June 11, 1999

See also decisions numbered 390 and 518.

Use and distribution of Nyquil as a means to become intoxicated:

Nathan H. by the Drummond Area School Dist., (532) Feb. 9, 2005

Possession of drugs:

L. F. by the Mauston School Dist., (583) January 18, 2007

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Possession, distribution and sale of a "look-alike drug:"

Nancy Z. by the Janesville School Dist., (139)
May 23, 1986 (p. 5)

Danielle S. by the Kenosha Area School Dist.,
(211) Nov. 2, 1993 (pp. - 4)

See also decisions numbered 406, 583 and 650.

Sale of a "look-alike drug" at school:

Dale C. by the Central Westosha School Dist.,
(137) May 15, 1986 (p. 10)

Danielle S. by the Kenosha Area School Dist.,
(211) Nov. 2, 1993 (pp. - 4)

See also decisions numbered 224, 327 and 406.

Possession of drug paraphernalia (pipe) on school grounds:

Tara V. by the Edgerton School Dist., (337)
September 22, 1997

Muranda P. by the Winneconne Community School Dist., (393) Aug. 2, 1999

See also decisions numbered 428, 431, 439, 443, 444, 445, 460, 461, 467, 475, 477, 487, 510, 517, 530, 564, 636, 638 and 642.

Hiding drug paraphernalia in another student's jacket:

Muranda P. by the Winneconne Community School Dist., (393) Aug. 2, 1999

Possessing and using prescription drugs while at school:

Liana D. by the Milwaukee Public School Dist.,
(335) September 15, 1997

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Joe K. by Hartford Union High School Dist.
(495) May 8, 2003

See also decisions numbered 498, 524, 612, 645 and 660.

Possession of a prescription drug without a prescription:

Benjamin Z. by the Marinette School Dist.
(507) March 1, 2004

N. K. by the Marshall School Dist., (620) May 15, 2008

Distribution and sale of prescription drugs:

David S. by the Elk Mound School Dist., (524) August 26, 2004

C.C. by the Parkview School Dist., (640) April 13, 2009

See also decision numbered 643.

Consumption of alcohol and providing alcohol to another student:

Adam S. by the East Troy Community School Dist., (304) Nov. 25, 1996 (p. 5)

Jessica G. by the Chippewa Falls Area Unified School Dist., (409) March 15, 2000

Possession or consumption of alcohol:

Michelle R. by the Suring Public School Dist., (126) March 7, 1985

Brandon G. by the West DePere School Dist., (160) April 27, 1989

See also decisions numbered 289, 304, 324, 409, 444, 445, 452, 484, 492, 527, 535, 567, 583, 609 and 636.

Under influence of alcohol at school:

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James S. by Waupun School Dist., (452) Jan. 25, 2002

Andrew T. by Waupaca School Dist., (454) Feb. 8, 2002

See also decisions numbered 484 and 652.

Possession of tobacco/cigarettes on school grounds:

Patrick P. by Merrill Area School Dist., (467) May 10, 2002

Nicole R. by Arcadia School Dist., (480) Nov. 20, 2002

See also decisions numbered 492 and 503.

Smoking tobacco/cigarettes on school grounds:

Jason M. by Arbor Vitae – Woodruff Jt. 1 School Dist., (492) April 28, 2003

Sexual harassment of students:

Robert M. by the School Dist. of Port Edwards, (114) June 7, 1983

Jordan G. by the Pardeeville Area School Dist., (521) July 26, 2004

See also decisions numbered 539, 555 and 653.

Sexual molestation or assault:

Sean H. by the Milwaukee School Dist., (106) Feb. 10, 1983 (p. 4)

Earl N. by the Milwaukee School Dist., (111) Mar. 3, 1983 (p. 5)

John C. B. by the Milwaukee School Dist., (116) Oct. 31, 1983 (p. 8)

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See also decisions numbered 398 and 417, 472, 474, 513, 514 and 668.

Male thrusting pelvis in face of restrained female student, whether penis exposed or not:

C. L. by the Clayton School Dist., (599) June 29, 2007

Touch and touching breast and vagina:

X. L. by the Clayton School Dist., (600) June 29, 2007

Repeatedly engaging in sexually explicit conduct at school:

Taiwan O. W. by the Kenosha Unified School Dist., (186) Apr. 7, 1992 (p. 3)

E.K. by the Racine Unified School Dist., (646) May 20, 2009

Making sexual remarks to another student in the classroom:

O. S. by the Racine Unified School Dist., (548) June 27, 2005

Engaging in sexual intercourse at school:

Nicole R. by the Granton Area School Dist., (301) Sept. 19, 1996 (p. 5)

Andrew K by Southern Door County School Dist., (476) Aug. 1, 2002

Engaging in sexual intercourse on school bus:

Kathleen W. by the Tri-County Area School Dist., (130) May 10, 1985 (p. 10)

William S. by the Tri-County Area School Dist., (132) June 21, 1985 (p. 9)

See also decision numbered 501.

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Engaging in sexual conduct on school trip:

David A. by the Kenosha Unified School Dist.,
(209) Aug. 2, 1993)

Verbal harassment and inappropriate touching:

Jordan G. by the Pardeeville Area School Dist.,
(521) July 26, 2004

Painting obscenities on building:

Keith A. by the Iola-Scandinavia School Dist.,
(133) Feb. 10, 1986 (p. 4)

Mike M. by the Iola-Scandinavia School Dist.,
(134) Feb. 10, 1986 (p. 4)

See also decision numbered 491.

Attempting to carve on a sewing machine counter top piece:

Christopher P. by the Shorewood School Dist.,
(192) May 18, 1992 (p. 3)

Theft of keys from the school office:

Jesse F. by the Stanley-Boyd School Dist.,
(189) Apr. 21, 1992 (pp. 3-4)

Burglary:

Ericka T. by the Milwaukee School Dist., (455)
Feb. 13, 2002

A. O. by the Janesville School Dist., (621) May
15, 2008

Theft of confidential correspondence and files of school:

Michaelene J. by the Washington Island School
Dist., (165) Aug. 1, 1989 (p. 14)

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Compromising the security of the school's computer network by illegally obtaining and using a staff member's password:

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005

Unplugging school buses on a below zero morning left students standing on corners waiting for a bus and "endangered" the property, health and safety of others:

Christopher W. by the Tomah Area School Dist., (247A) Apr. 21, 1995 (p. 7)

Displaying a bomb threat from the back window of a school bus on a school trip:

Curtis B. by the Marinette School Dist., (519) June 25, 2004

Operating vehicle on school property after consuming alcohol and with alcohol in car:

Daniel A. by the Mauston School Dist., (324) May 8, 1997 (pp. 4, 5)

Repeated Refusal to Obey School Rules

E.J. by the Kenosha Unified School Dist., (655) November 13, 2009

F.T. by the Watertown School Dist., (656) March 4, 2010

Strong Armed Robbery of Another Student

A.B. by the Milwaukee Public School Dist., (657) March 4, 2010

Fire, Starting

F.L. by the Eau Claire Area School Dist., (664) May 27, 2010

Bullying Another Student on Bus

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A.D. by Silver Lake J1 School Dist., (665) June 28, 2010

1. **While At School or Under the Supervision of A School Authority**

Section 120.13(1)(c), Stats., states in part:

(c) The school board may expel a pupil from school whenever it ... finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others ... and is satisfied that the interest of the school demands the pupil's expulsion. . . .

Where conduct occurred in a city owned park across the street from the school, there must be either (a) actual watching or directing at the time of the incident, or (b) "constructive supervision" arising out of a contract to supervise the park or a continuing practice or policy of supervising the park.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 13-15)

NOTE: The implication of Patrick Lee Y, of course, is that proof of actual supervision or constructive supervision would allow a finding of "under the supervision of a school authority." In a subsequent decision, however, SPI again told the Kenosha Unified School District that it may not expel students for conduct occurring across the street from school. This time a school principal and a teacher crossed the street to prevent one student from being struck by another student who was armed with a baseball bat. In his decision, SPI emphasized the fact that the principal and teacher went "across the street to break up the fight" and "the incident occurred in the street across from the main entrance in front of the school."

In reversing the board's expulsion decision, SPI found that the "Notice of Expulsion Hearing" letter and Expulsion Order made reference to conduct which occurred "at school." According to SPI, "across the street from school" is not "at school." SPI IGNORED, however, the fact that the "Notice of Expulsion Hearing" letter and Expulsion Order made reference to conduct occurring "while under the supervision of a school authority." SPI selected facts allowing a basis for reversal and ignored facts requiring an affirmation. The Kenosha School District did not appeal. It should have.

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J.M. by the Kenosha Unified School Dist., (627)
July 18, 2008

The issue arose again in J.K. by the Kenosha Unified School District Board of Education (635) March 6, 2009. The facts in J.K. are virtually the same as those in Patrick Lee Y. This time, however, the record on appeal was replete with proof of actual supervision occurring in Lincoln Park across the street from Lincoln School at the time of a drug sale. In spite of plentiful proof of “actual supervision” as discussed in Patrick Lee Y., SPI again reversed. This time he did so because there was no proof of a school district “policy expressing the district’s intent or obligation to enforce school rules... off school property...” This time the Kenosha School District did appeal. SPI’s decision was summarily reversed. Importantly, the Circuit Court found:

The Superintendent’s determination of law that a written policy is necessary in order for there to be supervision outside of school property or for due process considerations is also erroneous. A written policy may be one element to support a finding that supervision is being exercised under certain circumstances while not on school property, but it is not a requirement for supervision to be occurring.

SPI did not appeal.

Hopefully SPI’s future decisions will be governed by the very clear direction of the statute that says:

The school board may expel a pupil whenever it... finds that the pupil engaged in conduct... while under the supervision of a school authority which endangered the property, health or safety of others.

No board or school “policy” is required.

Sec. 120.13(1)(c), Stats., does not require that conduct which a school board has found to endanger the property, health or safety of others while at school or while under the supervision of a school authority be prohibited by school rules for such conduct to warrant expulsion. Furthermore, there is not necessarily a requirement that a student have prior notice from school authorities that such conduct might result in expulsion.

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William S. by the Tri-County Area School Board, (132) June 21, 1985 (p. 9) - sexual intercourse on school bus

Under Sec. 120.13(1)(c), Stats., a school board has been granted the authority to expel a pupil "...whenever it finds...that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others." In order for a school to rely upon this as grounds for expelling a student, it must be established both that the conduct occurred while the student was on school premises or under the supervision of a school authority and that the conduct "endangered the property, health or safety of others."

Trevis P. by the Arrowhead School Dist., (121) Sept. 13, 1984 (p. 3) - sale of marijuana at school

The SPI will take judicial notice of the fact that the sale of drugs to other students is conduct which endangers the health and safety of other students. A school district need not introduce evidence to prove this fact.

Brian C. by the Sheboygan Area School Dist., (158) Sept. 9, 1988 (p. 7)

Where the statutory ground relied upon for expulsion is that the pupil "endangered" the property, health or safety of others, it is not necessary to prove a pattern of misconduct.

Katie Nichole W. by the Kenosha Unified School Dist., (223) Mar. 10, 1994 (p. 4)

There is no requirement that a student's conduct involve disruption.

D. S. by the Cedar Grove-Belgium Area School Dist., (552) July 11, 2005 (p. 5)

Reasonable for board to conclude that student in a hotel room was under the supervision of a school authority while on a school-sponsored and school-supervised field trip.

Adam S. by the East Troy Community School Dist., (304) Nov. 25, 1996 (p. 5)

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Threats of violence, pulling knife, after departing school bus at its regularly scheduled stop does not constitute “at school or while under the supervision of a school authority.”

Timothy W. by the Greenfield School Dist.,
(315) March 21, 1997 (p. 5)

Whether the conduct occurred at school is a factual determination made by the board.

D. J. S. by the Hartford Union High School
Dist., (550) July 8, 2005 (p. 6)

Breaking into an elementary school, vandalizing the school’s property and stealing equipment from the school is conduct from “while at school” even though school was not in session.

A. O. by the Janesville School Dist., (621) May
15, 2008

The grounds for expulsion occurred off school grounds (and not under the supervision of a school authority), must be stricken from the board’s findings.

Andrew K. by Southern Door County School
Dist., (476) Aug. 1, 2002

2. While Away From School but Affecting Those At School or Under the Supervision of A School Authority

Section 120.13(1)(c), Stats., states in part:

(c) The school board may expel a pupil whenever it . . . finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority, and is satisfied that the interest of the school demands the pupil's expulsion. . .

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Where conduct is away from school, it must affect those at school or under the supervision of a school authority.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 8-13)

Timothy W. by the Greenfield School Dist., (315) March 21, 1997 (p. 5)

See also decisions numbered 476, 577 and 577a.

A student who pointed a gun at another student and threatened the other student on a county owned bus was not "at school or ... under the supervision of a school authority." The fact that his conduct was a reaction to a threat made to him at school does not make his conduct on the county owned bus conduct which "occurred at school"

A. S. by the West Allis School Dist., (568) March 13, 2006

A student who, from his home computer, threatened to bring a gun to school and kill students endangered the health, property or safety of students at school since the students at school were under the supervision of a school authority.

S. B. by the Gilmanton School Dist., (572) May 1, 2006

A person who happens to be a student of the same school does not satisfy this requirement.

Andrew K. by Southern Door County School Dist., (476) Aug. 1, 2002

Where conduct occurred in a city owned park across the street from the school, there must be either (a) actual watching or directing at the time of the incident, or (b) "constructive supervision" arising out of a contract to supervise the park or a continuing practice or policy of supervising the park.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 13-15)

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NOTE: The implication of Patrick Lee Y, of course, is that proof of actual supervision or constructive supervision would allow a finding of “under the supervision of a school authority.” In a subsequent decision, however, SPI again told the Kenosha Unified School District that it may not expel students for conduct occurring across the street from school. This time a school principal and a teacher crossed the street to prevent one student from being struck by another student who was armed with a baseball bat. In his decision, SPI emphasized the fact that the principal and teacher went “across the street to break up the fight” and “the incident occurred in the street across from the main entrance in front of the school.”

In reversing the board’s expulsion decision, SPI found that the “Notice of Expulsion Hearing” letter and Expulsion Order made reference to conduct which occurred “at school.” According to SPI, “across the street from school” is not “at school.” SPI IGNORED, however, the fact that the “Notice of Expulsion Hearing” letter and Expulsion Order made reference to conduct occurring “while under the supervision of a school authority.” SPI selected facts allowing a basis for reversal and ignored facts requiring an affirmation. The Kenosha School District did not appeal. It should have.

J.M. by the Kenosha Unified School Dist., (627)
July 18, 2008

The issue arose again in J.K. by the Kenosha Unified School District Board of Education (635) March 6, 2009. The facts in J.K. are virtually the same as those in Patrick Lee Y. This time, however, the record on appeal was replete with proof of actual supervision occurring in Lincoln Park across the street from Lincoln School at the time of a drug sale. In spite of plentiful proof of “actual supervision” as discussed in Patrick Lee Y, SPI again reversed. This time he did so because there was no proof of a school district “policy expressing the district’s intent or obligation to enforce school rules... off school property...” This time the Kenosha School District did appeal. SPI’s decision was summarily reversed. Importantly, the Circuit Court found:

The Superintendent’s determination of law that a written policy is necessary in order for there to be supervision outside of school property or for due process considerations is also erroneous. A written policy may be one element to support a finding that supervision is being exercised under certain circumstances while not on school property, but it is not a requirement for supervision to be occurring.

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SPI did not appeal.

Hopefully SPI's future decisions will be governed by the very clear direction of the statute that says:

The school board may expel a pupil whenever it... finds that the pupil engaged in conduct... while under the supervision of a school authority which endangered the property, health or safety of others.

No board or school "policy" is required.

SPI upheld expulsion where student sold LSD from his home (25 miles from high school) to student who then sold it at the high school. Student "did not know" that buyer would take LSD to the school or sell it in school. Student expelled because he knew LSD was a controlled substance, he knew that there were rumors around school that he had LSD for sale and that he knew the buyer was a student at the high school.

Jason Q. by the Hartford Union High School Dist., (272) Feb. 9, 1996 (pp. 4-5)

When alleging that a pupil should be expelled under this ground, the notice must contain allegations that refer to conduct that occurs off school grounds but endangers others at school, school employees or board members.

Eric Paul H. by Mishicot School Dist. Bd. of Education, (459) March 11, 2002

E. Endangering the Property, Health or Safety of Employee or School Board Member of the School District In Which the Pupil Is Enrolled

Section 120.13(1)(c)1., Stats., states in part

(c) The school board may expel a pupil whenever it finds . . . that the pupil . . . endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled . . . and is satisfied that

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the interest of the school demands the pupil's expulsion.

This language was added by the legislature on April 28, 1994, 1993 Wis. Act 284. To date, no decisions have been rendered with respect to this language.

F. Disruptive Conduct

Section 120.13(1)(c)2., Stats., states in part:

2. In addition to the grounds for expulsion under subd. 1., the school board may expel from school a pupil who is at least 16 years old if the school board finds that the pupil repeatedly engaged in conduct while at school or while under the supervision of a school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not constitute grounds for expulsion under subd. 1., and is satisfied that the interest of the school demands the pupil's expulsion.

When alleging a pupil should be expelled under this ground, the notice must include allegations that 1) the pupil is 16 years old, 2) the pupil repeatedly engaged in conduct, and 3) no other grounds listed in 120.13(1)(c)(1).

Eric Paul H. by Mishicot School Dist. Bd. of Education, (459) March 11, 2002

Only applies when a pupil is at least 16 years of age and no other ground for expulsion applies.

Sabrina T. by the Menominee Indian School Dist. Bd. of Education, (468) May 29, 2002

Whether a student's conduct was disruptive is a factual issue to be determined by the school board.

Tyler R. by Rib Lake School Dist., (473) July 22, 2002

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G. Possession of a Firearm

Section 120.13(1)(c)2m., Stats., states as follows:

2m. The school board shall commence proceedings under subd. 3. and expel a pupil from school for not less than one year whenever it finds that the pupil, while at school or while under the supervision of a school authority, possessed a firearm, as defined in 18 USC 921(a)(3). Annually, the school board shall report to the department the information specified under 20 USC 8921(d)(1) and (2).

This statute is required by federal statute. The federal statute (18 USC 921(a)(3), provides a definition for the word "firearm." As this definition may change from time to time, it is not printed here. Please review the federal statutes for the current version of this definition.

The statute requires that school boards "commence proceedings" if a student has a firearm as defined in 18 U.S.C. 921(a)(3) in school.

Alexander P. by the Oak Creek Franklin School
Dist. Board of Education (372) November 23,
1998

James A. by the Milwaukee Public School Dist.,
(426) Nov. 6, 2000

See also decision numbered 427.

School board is obligated by Sec. 120.13(1)(c)(2m), Stats. to commence expulsion proceedings. Board has discretion to modify the requirement in Sec. 120.13(1)(c)(2m), on a case-by-case basis **but** there is no discretion involved with respect to whether commencement of expulsion proceedings must be commenced. They must be.

Alexander P. by the Oak Creek Franklin School
Dist. Board of Education (372) November 23,
1998

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Sec. 120.13(1)(e)(2b), Stats. is the only criterion for expulsion that requires a school board to act. This is contrasted with deference to local control in the areas of other statutory expulsion criteria.

Alexander P. by the Oak Creek Franklin School Dist. Board of Education (372) November 23, 1998

School board must commence proceedings. It cannot be absolved of the statutory requirement by the withdrawal of a student. Even if the board decides not to expel a student pursuant to the authority granted by Sec. 120.13(1)(g), Stats., a board must affirmatively act and make this decision.

The statute seems to require that school boards “commence proceedings” and “expel” if a student has a “firearm” as defined in 18 USC 921(a)(3) in school. Please notice that section 120.13(g) eliminates the mandatory one-year expulsion and says:

(g) The school board may modify the requirement under pars. (c) 2m. and (e) 2, b on a case-by-case basis.

Nicholas K. by the Hudson School Dist., (305)
Dec. 5, 1996

William B. by the Hilbert School Dist., (316)
March 26, 1997

See also decisions numbered 320, 334 and 377.

Board has authority to lessen period of expulsion.

Del C. by the Stevens Point School Dist., (334)
Sept. 10, 1997 (p. 4)

Eric H. by the Central-Westosha Union High School Dist., (377) March 17, 1999

H. Truancy

Section 120.,13(1)(d), Stats., states as follows:

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(d) No pupil enrolled in a school district operated under ch. 119 may be suspended or expelled from school for truancy.

Ch. 119 of the statutes has application to the City of Milwaukee School District and no other. It would appear, therefore, that truancy (more than one absence from school) would be a violation of school rules and a basis for expulsion in all school districts other than that of the City of Milwaukee.

But see Shawn H. by the Central/Westosha High School Dist., (196) July 1, 1992 (p. 2), where the student was expelled for study hall misbehavior, theft, classroom misbehavior, failure to follow detention regulations, and repeated truancy. In its decision affirming the expulsion, SPI makes no mention of the inclusion of truancy as a ground for the expulsion.

See also Daniel A. W. by the Baron Area School Dist., (310) Jan. 31, 1997 (p. 4)

On the other hand, Sec. 118.16(4)(b), Stats., states as follows:

No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school.

Is expulsion an "unexcused absence?" Is expulsion a "suspension" within the meaning of this statute? Is this statute intended to effect expulsions at all?

Certainly Sec. 120.13(1)(d) and Secs. 118.16(4)(b) suggest a legislative policy unsympathetic to expulsion for reasons of truancy. Good practice would require that expulsion never occur solely because of truancy. Better policy would suggest avoidance of truancy as a ground for expulsion under any circumstances.

I. Endangering Conduct Need Not Be Violative Of Board Policy

Even if board's policy does not require expulsion, board has discretion to expel because of the violation of state law.

Nathaniel S. by the Wausau School Dist., (350)
March 25, 1998

But see III.C

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Whether district had an AODA policy or followed an AODA policy is irrelevant to review. The district's policy is not determinative or controlling. Possession of marijuana is a violation of law and has been repeatedly upheld as conduct which endangers the health or safety of others.

Justin S. by the Marshfield School Dist., (361)
May 27, 1998

VI. Order of Expulsion

Section 120.13(1)(c) states in part:

. . . Upon the ordering of the school board of the expulsion of the pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. . .

A. Time Requirements

Statute does not provide a time limit within which to send order of expulsion.

Kyle J. W. by the Viroqua Area School Dist.,
(413) April 27, 2000

B. S. by the New London School Dist., (578)
July 27, 2006

See also decisions numbered. 173, 193 and 583.

Where student asked that the district be required to send the quote "within a reasonable time" SPI determined this was not an issue because board had rectified the procedural defect.

Adam C. by the Evansville Community School
Dist., (340) November 26, 1999

B. Required Content

Board must make findings to support the expulsion. Board must determine conduct and whether conduct constituted a statutorily approved basis for expulsion. For example, if student has been noticed and charged with endangering the health, safety or welfare of pupils, board must make findings with respect to the student's conduct and determine that the conduct endangered the health, safety or welfare of pupils. In other words, board must determine what events took place and whether such conduct constitutes grounds for expulsion (and if so the specific grounds). The findings must be consistent with the charges contained in the notice.

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Additionally, and as importantly, the board must find that the interest of the school demands the pupil's expulsion.

Douglas G. by the New London School Dist.,
(228) Apr. 29, 1994

Richard W., Jr. by the Central High School
Dist. of Westosha, (122) Sept. 13, 1984

Nicole P. by the Crandon School Dist., (184)
Feb. 7, 1992

See also decisions numbered 325, 338, 465,
580 and 608.

Failure to include a determination, statement or finding that the "interest of the school demand the student's expulsion" requires reversal of the expulsion order.

C. by West Bend School Dist., (592) May 4,
2007

The board has wide discretion in determining whether the interest of the school demand expulsion.

B. M. by the Marshall School Dist., (608)
January 31, 2008

Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interest of the school demand expulsion.

Brad M. by the Boyceville Community School
Dist., (233) June 29, 1994

Kristin P. v. Mukwonago Area School Dist.,
(185) February 21, 1992

John B. by Milwaukee Public School Dist.,
(115) October 31, 1993

See also decision number 608.

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Order of expulsion should contain statutory basis the board relied upon for expulsion and that the board is satisfied that the interest of the school demands the pupil's expulsion as required in Sec. 120.13(1)(c), Stats. Such findings must appear in either transcript of proceedings or order of expulsion.

Michael S. by the Milwaukee Pub. School Bd.,
(128) May 10, 1985 (pp. 8-9)

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991 (p. 10)

See also decisions numbered 184, 197, 320
and 580.

Board's findings relied upon to establish a statutory basis for expulsion must be supported by evidence in the record.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991 (p. 10)

Clarence S. by the Bonduel School Dist., (320)
April 10, 1997 (p. 4)

See also decisions numbered 465 and 468.

Statutory basis for expulsion must have been contained in the notice, contained in the order for expulsion and established at the hearing.

John K. by the Wisconsin Rapids School Dist.,
(178) May 17, 1991 (p. 10)

Leo P. by the Whitewater School Dist., (351)
March 31, 1998

See also decisions numbered 481, 494 and
573.

Wis. Stat. Section 120.13(1)(c)4. requires the notice of expulsion hearing to advise the pupil and his parent of the appeal rights. There is no statutory requirement that this statute be included in the expulsion order.

J. H. by Nekoosa School Dis., (629) August 11,
2008

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If the notice of expulsion hearing and findings of fact and conclusions of law (order) are not based upon at least one common statutory ground, the expulsion will be reversed.

Travis M. by the Deerfield Community School Dist., (423) Sept. 25, 2000

Sabrina T. by the Menomonee Indian School Dist., (468) May 29, 2002

Melissa R. by the Westfield School Dist., (479) Sept. 10, 2002

See also decision numbered 573.

Where the board made factual findings of repeated failures to obey school rules, it relied on a long list of misconduct rather than only the misconduct alleged in the notice of expulsion. This is error.

Ulysses R. by South Milwaukee School Dist., (509) April 19, 2004

Board may not order expulsion based on repeated refusal to obey school rules where notice alleges misconduct endangering safety of others.

Randy H. by the Central Westosha UHS School Dist., (204) Apr. 6, 1993 (p. 5)

Sabrina T. by Menominee Indian School Dist., (468) May 29, 2002

Board may not order expulsion on repeated rule violations or a disruption in the educational interest of other students when notice relied upon conduct while at school which endangered the property, health and safety of others.

Sabrina T. by Menominee Indian School Dist., (468) May 29, 2002

Board may not order expulsion based on endangering health, safety and property of others where notice alleges a bomb threat.

Travis J. M. by the Deerfield Community School Dist., (423) Sept. 25, 2000

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Where the hearing record contains information regarding the misconduct presented to the board but there is no indication of what conduct the board found that James engaged in to meet the statutory grounds for expulsion, there is reversible error.

James R. by the West Bend School Dist., (396)
Aug. 17, 1999

Where expulsion order incorrectly stated that parents were present, SPI found no significance and affirmed the expulsion.

Jamie L. W. by the Hudson School Dist., (419)
June 15, 2000

Failure to properly set forth the date of the involved incident in the order of expulsion may require reversal.

Justin B. by Central/Westosha High School Dist., (494) May 8, 2003

Where factual conclusions of the board concerning the pupil's misconduct differed from the allegations contained in the notice of the expulsion hearing, the school board did not give adequate notice to the pupil about the charges that would be considered at this expulsion hearing.

Benjamin Z. by the Marinette School Dist.
(507) March 1, 2004

The pupil was given notice of expulsion based on possession of a drug. The board found that the student possessed the drug with the intent to sell it. This was not sufficient notice and therefore expulsion was reversed.

Benjamin Z. by the Marinette School Dist.
(507) March 1, 2004

Although it may be advisable to include a notice of appeal rights in the expulsion order, the statute does not require this.

B. S. by the New London School Dist., (578)
July 27, 2006

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The best interest of the pupil are not an element that must be considered by the school board.

W. T. by Beloit Turner School Dist., (591) May 4, 2007

C. Mailed to Students and Parents

Section 120.13(1)(c) states in part:

. . . Upon the ordering of the school board of the expulsion of the pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. . .

There is no requirement that the school board use certified mail to send expulsion related correspondence.

Luke D. by the Durand School Dist., (483) Feb. 14, 2003

A student's right to a copy of the school board's expulsion order does not give the student a right to a copy of the board's notes, but only a written copy of the board's decision and order. Minutes of the hearing are available to the student in that they are public records available upon request to any individual, including the student, and in that such minutes must be published in the local newspaper pursuant to Sec. 120.13(9), Stats.

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 5)

A school board must mail a copy of an expulsion order to any student expelled. The SPI must reverse any expulsion order in which the record does not disclose evidence that the student was mailed a copy of such an order as a failure to comply with the procedural mandates of Sec. 120.13(1)(c), Stats.

James by the Hortonville School Dist., (118) March 28, 1984 (p. 4)

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David by the Hortonville School Dist., (119)
March 28, 1984 (p. 4)

See also decisions numbered 131, 168, 171,
176, 230, 288 and 435.

An order of expulsion sent to the pupil and to the pupil's parent is required.
Failure in this regard requires reversal.

Clarence S. by the Bonduel School Dist., (320)
April 10, 1997 (p. 4)

James R. by the West Bend School Dist., (396)
August 17, 1999

See also decisions numbered 435, 465 and
473.

But see Jesse F. by the Stanley-Boyd School Dist., (189) April 21, 1992 (p. 4) (district administrator met with student and parents and gave them each a copy of the Findings and Expulsion Order); Brian V. by the Shorewood School Dist., (195) June 8, 1992 (p. 4) (student's mother sent student's sister to the superintendent's office to pick up two copies of the expulsion order).

The notice requirements set out in Sec. 120.13(1)(c), Stats. are mandatory in nature. A school district's failure to send a written notice of an expulsion hearing or a copy of the expulsion decision to a student individually renders the expulsion decision void.

Michael S. by the Milwaukee Public School Board, (128) May 10, 1985 (p. 8)

Isaac S., II by the Milwaukee School Dist.,
(187) Apr. 21, 1992 (pp. 8-9)

Bradley Scott P. by the Menasha Joint School Dist., (197) Aug. 21, 1992 (p. 6)

Tyrell D. by the Racine Unified School Dist.,
(288) May 14, 1996 (p. 5)

But see Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (p. 4); Brian V. by the Shorewood School Dist., (195) June 8, 1992 (p. 4).

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Sec. 120.13(1)(c), Stats., requires that upon the ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil, and if the pupil is a minor, to the pupil's parent or guardian.

Michael S. by the Milwaukee Pub. School Bd.,
(128) May 10, 1985 (p. 4)

Robin L. by the East Troy Community School
Dist., (253) June 21, 1995 (pp. 4-5)

See also decisions numbered 254, 279 and
280.

But see Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (p. 4); Brian V. by the Shorewood School Dist., (195) June 8, 1992 (p. 4).

Addressing a single copy of the expulsion order to a student and parent does not comply with the statutory requirement.

Russell B. by the Muskego-Norway School
Dist., (175) Feb. 28, 1991 (p. 9)

Antonio M. by the Kenosha Unified School
Dist., (176) Apr. 18, 1991 (p. 6)

But see Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 3) (expulsion order for student addressed to student with copies indicated to each of his parents).

A separate copy of the expulsion order must be mailed to the student's parent or guardian. Failure to do so renders the expulsion decision reversible error.

Adam S. by the East Troy Community School
Dist., (300) Aug. 9, 1996 (pp. 4,5)

Alfred L. by the Oconto Fall School Dist., (338)
September 24, 1997

Where a pupil lives with a foster parent(s) the school may send the notice of expulsion hearing and order to the foster parent rather than the parent.

Jaime B. by the Barron School Dist., (358) May
14, 1998

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It was entirely proper to send the pupil's copy of the expulsion order to his usual home (mother's) address, when there was no one on the board or in the administration that knew the pupil's court-ordered location.

Kyle J. W. by the Viroqua School Dist., (413)
April 27, 2000

There is no requirement that the school board use certified mail to send expulsion related correspondence.

Luke D. by Durand School Dist., (483)
Feb. 14, 2003

D. Duration and Severity, Harshness

Jared L. by the Menomonie Falls School Dist.,
(218) Feb. 10, 1994 (p. 4)

Michael C. G. by the Hudson School Dist.,
(219) Feb. 11, 1994 (p. 8)

1. Complete Discretion of Board

The decision to expel a student and the determination of the length of an expulsion are both within the discretion of the school board as long as the board complies with all of the procedural requirements of Sec. 120.13(1)(c), Stats.

Ricardo S. by the School Dist. of Wisconsin Rapids, (145) Sept. 5, 1986 (p. 8)

Lavell A. by the Kenosha Unified School Dist.,
(147) Jan. 12, 1987 (p. 8)

See also decisions numbered 148, 150, 202, 205, 206, 208, 209, 210, 211, 215, 218, 219, 242, 268, 269, 272, 277, 293, 297, 298, 302, 303, 305, 309, 312, 313, 314, 317, 318, 321, 323, 332, 334, 336, 337, 349, 350, 351, 352, 354, 360, 362, 363, 364, 365, 368, 369, 371, 374, 375, 376, 279, 380, 386, 397, 398, 401, 402, 405, 408, 410, 415, 425, 453, 471 and 628.

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Board need not follow recommendation of administration. May exceed it. The duration of expulsion is a matter left to the discretion of the board.

Eric P. by the Tomah Area School Dist., (210)
Aug. 12, 1993

Brad O. by the Madison Metropolitan School Dist., (246) Mar. 16, 1995 (p. 4)

See also decisions numbered 252, 272, 277, 293, 297, 298, 305 and 309.

Board is authorized to combine brief period of expulsion with other lesser discipline such as exclusion from co-curricular activities for a specified period. Lesser forms of discipline deprive the pupil of a privilege and not a right

Troy Y. by the Burlington Area School Dist., (309) Jan. 21, 1997 (p. 4)

Danielle A. W. by the Baron Area School Dist., (310) Jan. 31, 1997 (p. 5)

See also decisions numbered 311, 312 and 373.

Depriving the pupil of a privilege is distinct from requiring the pupil to perform particular activities or otherwise placing conditions on his return to school. SPI has questioned the validity of certain conditions imposed by school districts for the early re-admission of an expelled pupil.

Brandon C. by Florence County School Dist., (251) June 12, 1995

Lori L. by Baraboo School Dist., (227) April 22, 1994

Brad by the Burlington School Dist., (312) Feb. 14, 1997 (pp. 4, 5)

SPI has refrained from exercising his discretion, in deference to local school board authority, to "modify" the length of expulsions.

Dusty S. by the Mukwonago School Dist., (237)
Aug. 26, 1994 (p. 8)

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Alan W. by the West Bend School Dist., (518)
June 25, 2004

2. May Be Permanent

There is no provision in Sec. 120.13(1)(c), Stats., which limits the duration of an expulsion. Accordingly, an expulsion for the remainder of a student's career appears to be statutorily permissible.

Jesse K. by the School Bd. of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985 (p. 7)

Rebecca S. by the Janesville School Dist., (248) May 8, 1995 (p. 5)

The United States District Court for the Eastern District of Wisconsin has twice held that permanent expulsion violates constitutionally guaranteed substantive due process rights.

The decisions are unpublished. See *Tate v. Racine Unified School Dist.*, 1996 U.S. Dist. LEXIS 22723. Copies may be obtained from the Coordinator of Employee Services for the Racine Unified School District.

3. SPI May Not Reverse For Reasons of Severity, Harshness, etc.

The SPI is foreclosed from reviewing whether the period assessed by a school board for an expulsion is excessive or unduly harsh.

James M. B. by the Westosha School Dist., (101) Dec. 22, 1982 (pp. 2-3)

Kelly B. by the School Dist. of Three Lakes, (100) Aug. 23, 1982 (p. 2)

See also decisions numbered 147, 159, 162, 185, 188, 189, 202, 205, 206, 215, 218, 243, 252, 274, 294, and 297.

Since *Racine v. Thompson*, the SPI has interpreted the dicta in that decision to mean that his review of an expulsion decision is limited to determining whether the statutory requirements of Sec. 120.13(1)(c),

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Stats., have been met and that he is foreclosed from exercising his discretion to review whether the expulsion was excessive.

Jesse K. by the School Board of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985 (p. 7)

Lavell A. by the Kenosha Unified School Dist., (147) Jan. 12, 1987 (pp. 8-9)

See also decisions numbered 185, 188, 189, 202, 215 and 220.

The SPI lacks the authority to terminate an expulsion order on the ground that the punishment imposed has served its purpose and is no longer necessary (interpreting Racine Unified School Dist. v. Thompson, 106 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

David G. by the Westosha School Dist., (109) Feb. 25, 1983 (p. 3)

The SPI has no authority to review whether or not the penalty of expulsion was disproportionate to the misconduct.

Susan Marie H. by the Kenosha Unified School Dist., (157) June 18, 1988 (p. 8)

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 12)

Rhiannon V. by the Muskego-Norway School Dist., (188) Apr. 21, 1992 (p. 9)

Where a board chooses to expel for a longer period than set out in the board-adopted student handbook, statutory error will not be found as long as the period statutorily at risk was properly noticed.

Brandon D. by the De Soto Area School Dist., (206) May 3, 1993 (p. 7)

The duration of expulsion imposed on one student has no bearing on the duration of expulsion imposed on another student involved in the same incident, where the board had less information during the hearing of the first student.

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Eric P. by the Tomah Area School Dist., (210)
Aug. 12, 1993 (p. 15)

Danielle A. W. by the Baron Area School Dist.,
(310) Jan. 31, 1997 (p. 4)

Steven S. by the Merrill Area School Dist.,
(311) Feb. 7, 1997 (5)

Alexander B. Y Milwaukee School Dist., (453)
Feb. 1, 2002

Because it is presumed that each pupil's situation is different, the disciplinary treatment of other students is not relevant to the superintendent's review.

Damis M. by the Cadott School Dist., (397)
Aug. 20, 1999

Dustin P. by the Flambeau School Dist., (398)
Aug. 20, 1999

See also decisions numbered 408, 453, 456,
463, 466, 467, 507, 520, 524, 529, 535, 550,
554, 558, 588, 589, 592, 597 and 608..

Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to review.

Aron E. P. by the Sturgeon Bay School Dist.,
(341) December 17, 1997

Nathaniel S. by the Wausau School Dist., (350)
March 25, 1998

Leo P. by the Whitewater School Dist., (351)
March 31, 1998

See also decisions numbered 588, 589, 592,
597, 626, 640, 645, 652, 653, 661, 663 and
665.

SPI is without authority to address issues of fairness and/or unevenness of disciplinary measures.

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Roy H. by the Blaire School Dist., (159) Sept. 26, 1988

Douglas S. by the Neenah School Dist., (162) May 23, 1989

See also decisions numbered 310, 317, 321, 331, 335, 341, 351, 359 and 453.

Each student has a different disciplinary background, personal background and level of culpability. It is more than appropriate for the board to consider each pupil's individual circumstances when deciding whether to expel and for how long.

C. T. by the Suring School Dist., (543) May 26, 2005 (p. 4)

W. T. by the Suring School Dist., (544) May 26, 2005 (p. 4)

Disciplinary measures used in other districts are irrelevant.

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

D. S. by Cedar Grove-Belgium Area School Dist., (552) July 11, 2005 (p. 6)

Wisconsin school districts are not bound by cases from other states.

D. S. by the Cedar Grove – Belgium Area School Dist., (552) July 11, 2005

Principal's decisions as to other students are not relevant.

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

State superintendent has consistently declined to modify the length of expulsions.

Will F. by the Holcombe School Dist., (407) Feb. 21, 2000

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Michael M. by the Appleton Area School Dist.,
(411) April 25, 2000

See also decisions 418, 420, 423, 427, 429, 430, 431, 433, 434, 435, 436, 439, 440, 441, 447, 450, 453, 460, 461, 462, 463, 466, 467, 470, 477, 480, 484, 485, 486, 488, 489, 490, 491, 493, 494, 495, 496, 499, 502, 507, 508, 512, 513, 514, 516, 518, 520, 521, 524, 528, 529, 530, 532, 535, 536, 537, 538, 540, 541, 542, 543, 544, 550, 551, 552, 554, 556, 558, 560, 563, 564, 566, 567, 571, 583, 584, 588, 589, 591, 592, 595, 596, 597, 598, 604, 605, 608, 610, 617, 619, 622, 623, 634, 636, 638, 639, 640, 642, 643, 645, 648, 649, 651, 652, 653, 658, 661, 662, 663, 664 and 665.

The board is in the best position to judge the demeanor of witnesses and to know and understand what the community requires as a response to the misconduct.

Will F. by the Holcombe School Dist., (407)
Feb. 21, 2000

Michael M. by the Appleton Area School Dist.,
(411) April 25, 2000

See also decisions 418, 420, 423, 427, 429, 430, 431, 433, 434, 435, 436, 450, 453, 463, 467, 470, 477, 480, 484, 485, 486, 488, 489, 490, 491, 493, 494, 495, 496, 499, 502, 505, 507, 508, 512, 513, 514, 516, 518, 520, 521, 524, 528, 529, 530, 532, 535, 536, 537, 538, 540, 541, 542, 543, 544, 550, 551, 552, 554, 556, 558, 560, 563, 564, 566, 567, 571, 584, 589, 591, 592, 595, 596, 597, 598, 604, 605, 608, 610, 617, 619, 623, 626, 634, 640, 643, 644, 645, 649, 651, 652, 653, 658, 662, 664 and 665.

The SPI believes that it is inappropriate for the SPI, absent an extraordinary circumstance or a violation of procedural requirements, to second guess the appropriateness of a school board's determination.

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See also decisions numbered 470, 477, 480, 484, 485, 486, 488, 489, 490, 491, 493, 494, 495, 496, 499, 502, 508, 512, 513, 514, 516, 518, 520, 521, 524, 528, 529, 530, 535, 536, 537, 538, 540, 541, 542, 543, 544, 550, 551, 552, 554, 556, 563, 564, 566, 567, 571, 584, 588, 589, 591, 592, 595, 596, 597, 598, 604, 605, 608, 610, 617, 619, 622, 623, 634, 640, 643, 649, 651, 652, 653, 658, 662, 664 and 665.

A pupil's expulsion period is determined by the school board. While school officials may offer suggestions or recommendations pertaining to alternative punishment, the school board is not required to follow them.

R.C. by the Milwaukee School District Board of Education, (651) September 11, 2009

E. Scrivener's Error

Expulsion order incorrectly describes conduct occurring on same day as hearing. Board addressed conduct which had occurred weeks before date of hearing. Clearly a scrivener's error. Board should correct this error but it is not a basis to reverse the order for expulsion.

Michael J. by the Nicolet Union High School Dist. by Bd. of Education, (456) March 4, 2002

Expulsion order that listed improper findings and improper length of expulsion as scriveners' errors should be corrected, but not a basis for reversal.

Alex M. by the Racine Unified School Dist., (533) Feb. 15, 2005 (p. 2 n.1-2)

F. Early Reinstatement

§ 120.13(1)(h) states as follows

(h) 1. In this paragraph:

a. "Early reinstatement" means the reinstatement to school of an expelled pupil before the expiration of the term of expulsion specified in the pupil's expulsion order under par. (c) 3, or (e) 3.

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b. “Early reinstatement condition” means a condition that a pupil is required to meet before he or she may be granted early reinstatement or a condition that a pupil is required to meet after his or her early reinstatement but before the expiration of the term of expulsion specified in the pupil’s expulsion order under par. (c) 3. or (e) 3.

2. A school board, or an independent hearing panel or independent hearing officer acting under par. (e), may specify one or more early reinstatement conditions in the expulsion order under par. (c) 3., or (e) 3. If the early reinstatement conditions are related to the reasons for the pupil’s expulsion. Within 15 days after the date on which an expulsion order is issued by an independent hearing panel or independent hearing officer, the expelled pupil or, if the pupil is a minor, the pupil’s parent or guardian may appeal the determination regarding whether an early reinstatement condition specified in the expulsion order is related to the reasons for the pupil’s expulsion to the school board. The decision of a school board regarding that determination is final and not subject to appeal.

3. If the school district administrator or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil’s school, determines that a pupil has met the early reinstatement conditions that he or she is required to meet before he or she may be granted early reinstatement, the school district administrator or designee may grant the pupil early reinstatement. The determination of the school district administrator or designee is final.

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4. If a pupil violates an early reinstatement condition that the pupil was required to meet after his or her early reinstatement but before the expiration of the term of expulsion, the school district administrator or a principal or teacher designated by the school district administrator may revoke the pupil's early reinstatement. Before revoking the pupil's early reinstatement, the school district administrator or his or her designee shall advise the pupil of the reason for the proposed revocation, including the early reinstatement condition alleged to have been violated, provide the pupil an opportunity to present his or her explanation of the alleged violation and make a determination that the pupil violated the early reinstatement condition and that the revocation of the pupil's early reinstatement is appropriate. If the school district administrator or designee revokes the pupil's early reinstatement, the school district administrator or designee shall give prompt written notice of the revocation and the reason for the revocation, including the early reinstatement condition violated, to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

5. Except as provided in subd. 6., if a pupil's early reinstatement is revoked under subd. 4., the pupil's expulsion shall continue to the expiration of the term of the expulsion specified in the expulsion order unless the pupil or, if the pupil is a minor, the pupil's parent or guardian and the school board, independent hearing panel or independent hearing officer agree, in writing, to modify the expulsion order.

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6. Within 5 school days after the revocation of a pupil's early reinstatement under subd. 4., the pupil or, if the pupil is a minor, the pupil's parent or guardian may request a conference with the school district administrator or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school. If a conference is requested, it shall be held within 5 school days following the request. If, after the conference, the school district administrator or his or her designee finds that the pupil did not violate an early reinstatement condition or that the revocation was inappropriate, the pupil shall be reinstated to school under the same reinstatement conditions as in the expulsion order and the early reinstatement revocation shall be expunged from the pupil's record. If the school district administrator or his or her designee finds that the pupil violated an early reinstatement condition and that the revocation was appropriate, he or she shall mail separate copies of the decision to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The decision of the school district administrator or his or her designee is final.

§ 119.25(2)(d) states as follows:

(d) 1. In this paragraph:

a. "Early reinstatement" means the reinstatement to school of an expelled pupil before the expiration of the term of expulsion specified in the pupil's expulsion order under par. (b).

b. "Early reinstatement condition" means a condition that a pupil is required to meet before he or she may be granted early reinstatement or a condition that a

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pupil is required to meet after his or her early reinstatement but before the expiration of the term of expulsion specified in the pupil's expulsion order under par. (b).

2. An independent hearing panel or independent hearing officer appointed by the board may specify one or more early reinstatement conditions in the expulsion order under par. (b) if the early reinstatement conditions are related to the reasons for the pupil's expulsion. Within 15 days after the date on which the expulsion order is issued, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the determination regarding whether an early reinstatement condition specified in the expulsion order is related to the reasons for the pupil's expulsion to the board. The decision of the board regarding that determination is final and not subject to appeal.

3. If the superintendent of schools or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school, determines that a pupil has met the early reinstatement conditions that he or she is required to meet before he or she may be granted early reinstatement, the superintendent of schools or designee may grant the pupil early reinstatement. The determination of the superintendent of schools or designee is final.

4. If a pupil violates an early reinstatement condition that the pupil was required to meet after his or her early reinstatement but before the expiration of the term of expulsion, the superintendent of

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schools or a principal or teacher designated by the superintendent of schools may revoke the pupil's early reinstatement as provided in s. 120.13(1)(h)4.

5. Except as provided in subd. 6., if the pupil's early reinstatement is revoked under subd. 4., the pupil's expulsion shall continue to the expiration of the term specified in the expulsion order unless the pupil or, if the pupil is a minor, the pupil's parent or guardian and the board, independent hearing panel or independent hearing officer agree, in writing, to modify the expulsion order.

6. Within 5 school days after the revocation of a pupil's early reinstatement under subd. 4., the pupil or, if the pupil is a minor, the pupil's parent or guardian may request a conference with the superintendent of schools or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school. If a conference is requested, it shall be held within 5 school days following the request. If, after the conference, the superintendent of schools or his or her designee finds that the pupil did not violate an early reinstatement condition or that the revocation was inappropriate, the pupil shall be reinstated to school under the same reinstatement conditions as in the expulsion order and the early reinstatement revocation shall be expunged from the pupil's record. If the superintendent of schools or his or her designee finds that the pupil violated an early reinstatement condition and that the revocation was appropriate, he or she shall mail separate copies of the decision to the pupil and, if the pupil is a minor, to the

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pupil's parent or guardian. The decision of the superintendent of schools or his or her designee is final.

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Wisconsin Association of School Boards, Inc.,
"NEW LAWS," regarding Assembly Bill 447,
1999 Wisconsin Act 128, effective date May
24, 2000, states as follows:

CONDITIONAL EARLY REINSTATEMENT OF EXPELLED PUPIL

This new law authorizes a school board, or independent hearing panel or independent hearing officer authorized by the school board to make expulsion decisions, to impose one or more early reinstatement conditions under which a pupil who is expelled from school may be reinstated to school before the end of the term of his or her expulsion. An early reinstatement condition may be: 1) a condition that a pupil is required to meet before he or she may be granted early reinstatement; or 2) a condition that a pupil is required to meet after his or her early reinstatement but before the end of the term of the expulsion specified in the pupil's expulsion order. The early reinstatement conditions must be related to the reasons for the pupil's expulsion and must be specified in the expulsion order.

The determination by an independent hearing panel or independent hearing officer regarding whether a reinstatement condition is related to the reasons for the pupil's expulsion may be appealed to the school board. The school board's decision regarding that determination is final.

If the school district administrator or his or her designee, who must be someone other than a principal, administrator or teacher in the pupil's school, determines that a pupil has met the early reinstatement conditions that he or she must meet before being granted early reinstatement, the school district administrator or designee may grant the pupil early reinstatement. The determination of the school district administrator or designee is final.

The school district is not required to offer early readmission. If it is offered, the conditions must be related to the reason for the expulsion. Section 120.139(1)(h)2.

Hannah W. by River Falls School Dist., (502)
Dec. 12, 2003

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If a pupil or parent does not agree that the condition relates to the reason for expulsion, the pupil or parent must appeal to the school board within 15 days of the order.

Hannah W. by River Falls School Dist., (502)
Dec. 12, 2003

G. Conditional Readmission

The board does not have authority to put conditions on enrollment after the conclusion of the expulsion term.

Ben J. by the New Glarus School Dist. (504)
Dec. 19, 2003

Board may not require condition to readmission after period of expulsion, but may inform parties of applicable compulsory attendance law and require attendance at school during expulsion.

Miranda V. by the Howard-Suamico School Dist., (224) Mar. 22, 1994 (p. 8)

School boards have the authority to permit conditional readmission, provided the conditions are related to the reason for the expulsion.

D. H. by the New Richmond School Dist., (549)
June 30, 2005 (p. 6)

Board's conditional readmission requirement that student must refrain from engaging in further acts of violence on school premises or intimidation towards others at school as well as refraining from any acts of defiance towards staff was related to the circumstances of the expulsion and therefore appropriate.

D. H. by the New Richmond School Dist., (549)
June 30, 2005 (p. 6)

DPI has approved districts' impositions of conditions upon re-entry to school prior to the expiration of a period of expulsion.

Barry L. W. by the Kenosha Unified School Dist., (220) Mar. 7, 1994 (p. 5)

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Pursuant to Wis. Stat. § 120.13(1)(h)6, the district's determination that the conditions of readmission were violated are final and not subject to appeal.

A. O. by the Hudson School Dist., (570) Mar. 27, 2006 (p. 2)

Superintendent encourages school boards to give students guilty of misconduct a second chance. Because of this, SPI grants as much deference as possible to the district to creatively craft as salutary a program as it can to address unique pupil circumstances.

Matthew C. by the Lake Geneva-Genoa City School Dist., (277) Mar. 12, 1996 (pp. 7-8)

1. Conditional Readmission - Required Counseling

Applicable statutes do not authorize school boards to attach conditions to readmission AFTER the period of expulsion has expired.

Miranda V. by the Howard-Suamico School Dist., (224) Mar. 22, 1994 (p. 8)

Once the period of expulsion expires, readmission must be unconditional and any such condition is unenforceable.

Lori L. by the Baraboo School Dist., (227) Apr. 22, 1994 (p. 4)

Once the term of expulsion has expired, full unconditional state constitutional rights to an education are reinstated. Board may not impose conditions on readmission after period of expulsion.

Paul O. by the Florence County School Dist., (232) June 28, 1994 (p. 4)

While it is desirable that a student with a drug or alcohol problem obtain counseling, the SPI is uncertain whether Sec. 120.13(1)(c), Stats., authorizes the school board to establish conditions (counseling) on the readmission of an expelled student once the period of expulsion has lapsed.

Trevis P. by the Arrowhead School Dist., (121) Sept. 13, 1984 (p. 5)

Chapter VI - Order of Expulsion

SPI "questions" portion of board order for expulsion which conditions readmittance to school upon participation in an approved alcohol and drug abuse counseling program.

SPI "questions" whether board has authority to require participation in counseling to attend school.

Michael J. B. by the Palmyra-Eagle Area School Dist., (151) July 27, 1987 (p. 4)

Lori P. by the Cudahy School Dist., (169) May 21, 1990 (pp. 6- 7)

See also decisions numbered 227, 309 and 312.

While school boards may not have the authority to require counseling or assessment, they may structure the participation in appropriate assessment or counseling as an alternative to expulsion or as a condition for early re-admission to school should the student choose that option.

Lori P. by the Cudahy School Dist., (169) May 21, 1990 (p. 7)

Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (pp. 5-6) (conditioned readmission to school following expulsion but conditions not drug- or alcohol- related)

Lori L. by the Baraboo School Dist., (227) Apr. 22, 1994 (p. 4)

Paul O. by the Florence County School Dist., (232) June 28, 1994 (p. 4)

2. Conditional Readmission - EEN Evaluations

The district lacks authority to condition readmission on an EEN evaluation.

Chad B. by the Janesville School Dist., (203) Apr. 1, 1993 (p. 5)

3. Conditional Readmission - Community Service

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School boards may not impose community service requirements on a pupil as a condition to readmission after the expulsion period has ended.

Paul O. by the Florence County School Dist.,
(232) June 28, 1994 (p. 4)

4. Conditional Readmission - Guidelines

Where board suggests "application for early readmittance," board should set forth criteria for consideration of early readmission.

Jason S. by the Kenosha Unified School Dist.,
(205) Apr. 19, 1993 (p. 5)

5. Conditional Readmission – Appeal

Revocation of early readmission for violation of the terms of early admission or conditional readmission is within the authority of the board. The superintendent has no jurisdiction over this appeal. The board's determination that the conditions of readmission were violated are final and not subject to appeal. Neither is there an obligation on the part of the school board to reconsider an expulsion or term of expulsion.

A. O. by the Hudson School Dist., (570) March
27, 2006

H. Reconsideration by Board

If pupil would like the board or panel to reconsider its decision, it should contact the school district directly. The district is not required to entertain such a request.

Andrea M. by the Milwaukee Public School
Dist., (536) April 11, 2005

VII. Compulsory Attendance at School Following Expulsion

School attendance is compulsory, regardless of expulsion. Sec. 118.15, Wis. Stats.

John Michael N. by the Random Lake School
Dist., (331) Aug. 5, 1997 (p. 5)

Board may require school attendance during expulsion as a condition for readmission.

John Michael N. by the Random Lake School
Dist., (331) Aug. 5, 1997 (p. 5)

Miranda V. by the Howard-Suamico School
Dist., (224) Mar. 22, 1994 (p. 4)

Board may not require condition to readmission after period of expulsion, but may inform parties of applicable compulsory attendance law and require attendance at school during expulsion.

Miranda V. by the Howard-Suamico School
Dist., (224) Mar. 22, 1994 (p. 8)

VIII. Alternatives to Expulsion

SPI believes that board may structure participation in appropriate assessment or counseling as an alternative to expulsion or as a condition for early admission to school should the student choose that option.

Lori P. by the Cudahy School Dist., (169) May 21, 1990 (p. 7)

None of the statutory scheme suggests a legislatively intended relationship between the alternative education program (for example, homebound study) and delaying the time between a suspension pending expulsion and issuance of notice of expulsion hearing.

Lenny R. G. by the Madison Metropolitan School Dist., (207) May 17, 1993 (p. 14)

The SPI is not authorized to review or overrule the laws governing admission into VTAE programs in the context of an expulsion appeal.

Brad S. by the Germantown School Dist., (221) Mar. 7, 1994 (p. 4)

A. Referral to Outside Agencies

A student-appellant's allegation that a school board failed before expelling the student to refer him to a community health resource to give him an opportunity to improve, is not germane to any substantive or procedural requirements of sec. 120.13(1)(c), Stats., and is therefore irrelevant to the propriety of the expulsion.

Eric K. by the Rosholt School Dist., (142) June 18, 1986 (pp. 5-6)

The SPI is not authorized to review or overrule the laws governing admission into VTAE programs in the context of an expulsion appeal.

Brad S. by the Germantown School Dist., (221) Mar. 7, 1994 (p. 4)

Chapter VIII - Alternatives to Expulsion

B. Withdrawal From School

Student may voluntarily withdraw from school rather than be expelled.

Nicholas K. by the Hudson School Dist., (305)
Dec. 5, 1996 (p. 6)

School district must enroll a student who is a resident of the district and not currently under an expulsion order entered by another Wisconsin public school district.

Alexander P. by the Oak Creek Franklin School Dist. Board of Education (372) November 23, 1998

School board is obligated to commence school expulsion proceedings where conduct involves possession of firearms within the meaning of Sec. 120.13(1)(c)(2m), Stats. A school board must do so even though student has withdrawn from the school district.

Alexander P. by the Oak Creek Franklin School Dist. Board of Education (372) November 23, 1998

Sec. 120.13(1)(e)(2b), Stats., is the only criterion that requires a school board to act.

Alexander P. by the Oak Creek Franklin School Dist. Board of Education (372) November 23, 1998

Parents have the option to withdraw a student but only if the student is enrolled in another public school, private school or home school.

Bobby H. by Elmbrook School Dist., (488)
March 21, 2003

Failure to notify student of the availability of withdrawal has no application to an expulsion proceeding.

Bobby H. by Elmbrook School Dist., (488)
March 21, 2003

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The parent's act of withdrawing the pupil does not negate the school's authority to take action for conduct that occurred while the pupil was enrolled. "It is the policy of the State of Wisconsin that students cannot drop out and re-enroll in school at a whim."

Alex M. by the Racine Unified School Dist.,
(533) Feb. 15, 2005 (p. 4)

P. A. by the Janesville School Dist., (630)
September 4, 2008

The board is not required to abandon the expulsion process because a student withdraws from school. Even if the pupil withdraws, the board may pursue expulsion.

W. T. by Beloit Turner School Dist., (591)
May 4, 2007

P. A. by the Janesville School Dist., (630)
September 4, 2008

SPI has suggested, for a number of reasons, that "withdrawal or expel deals" should not be used.

Alexander P. by the Oak Creek Franklin School
Dist. Board of Education (372) November 23,
1998

Andrew T. by the Waupaca School Dist Bd. of
Education, (454) February 8, 2002

See also decision numbered 488 and 630.

An agreement to withdraw gives the pupil a false sense that the threat of expulsion is over. In addition, it can require other public schools to enroll pupils who have endangered others at school and would be expelled but for a withdrawal agreement.

Todd N. by Elmbrook School Dist., (477)
August 22, 2002

The board has the authority to allow a child to withdraw from school as long as the child is compliant with compulsory attendance laws. The

Chapter VIII - Alternatives to Expulsion

board is not required to make an offer of withdrawal. See Wis. Stats. Section 118.15.

Andrew T. by the Waupaca School Dist Bd. of Education, (454) February 8, 2002

Bobby H. by Elmbrook School Dist., (488) March 21, 2003

A student may withdraw from public school as long as he or she is enrolled in a different public school, a private school or is being home schooled.

Todd N. by Elmbrook School Dist., (477) August 22, 2002

An offer of withdrawal is not a basis for an appeal or to overturn an expulsion on appeal.

Todd N. by Elmbrook School Dist., (477) August 22, 2002

The district may, however, forge ahead with the expulsion.

See decision numbered 477.

IX. Alternate Educational Programs During Expulsion

The school board is not required to offer or consider an alternative to expulsion. During the period of expulsion from a Wisconsin public school, the pupil's *right* to a public education pursuant to the Wisconsin Constitution is suspended.

B. W. by the Black River Falls School Dist.,
(542) May 26, 2005

C. M. by the Kenosha School Dist., (616) April
17, 2008

J.N. by the Milwaukee Public School Dist.,
(659) April 9, 2010

Although it might be advisable for districts to offer alternative educational programs for students who have been expelled, there is currently no law that requires them to do so.

Dale C. by the Central Westosha School Dist.,
(137) May 15, 1986 (p. 11)

Ricardo S. by the School Dist. of Wisconsin
Rapids, (145) Sept. 5, 1986 (p. 7)

See also decisions numbered 147, 157, 221,
237, 297, 405, 407, 616 and 659.

As a general practice, the Department of Public Instruction encourages districts to provide at least homebound study for regular education students who have been expelled, although such a program is not required.

Brandon G. by the West DePere School Dist.,
(160) April 27, 1989 (p. 7)

Barry L. W. by the Kenosha Unified School
Dist., (220) Mar. 7, 1994 (p. 5)

Matt L. by the Merrill Area Public School Dist.,
(381) May 19, 1999

See also decision numbered 542, 616 and 633.

Chapter IX – Alternate Educational Programs During Expulsion

But see Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 8) (the school board recommended and directed administration to work with the parents if they so desired to devise an alternative program of education for the period of expulsion, provided it be at no additional cost to the district); Rhiannon V. by the Muskego-Norway School Dist., (188) Apr. 21, 1992 (p. 5) (the school board ordered that the administration offer not less than four hours nor more than six hours per week of homebound instructional services to the student).

Nothing prevents the pupil from attempting to enroll in a private school or another public school at his own expense or he can be home schooled.

B. W. by the Black River Falls School Dist.,
(542) May 26, 2005

School districts have authority to refuse to accept any student during the term of an expulsion from another school district.

C. M. by the Kenosha School Dist., (616) April
17, 2008

X. Appeal to SPI

A. Procedure Generally

Section 120.13(1)(c) states in part:

. . . The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent. If the school board's decision is appealed to the state superintendent, within 60 days after the date on which the state superintendent receives the appeal, the state superintendent shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the school board shall be enforced while the state superintendent reviews the decision. . . .

Sec. PI 1.03(1), Wis. Adm. Code requires that all complaints and appeals be filed in writing specifying the grounds upon which the action is brought, the facts and any relief sought.

SPI does not require strict compliance with Sec. PI 1.03(1) Wis. Adm. Code.

Nicholas K. by the Hudson School Dist., (305)
Dec. 5, 1996 (p. 4)

Sec. 120.13(1)(c), Stats., requires that an expelled student, if 18 years old or older, must file an appeal from an expulsion order in his own name. If such a student fails to file an appeal in his name within 20 days [in accordance with PI 1.07(1)(a)] after receiving a request to do so by the SPI, his appeal will be dismissed.

Michael W., Jr. by the Boyceville Community School Dist., (123) Nov. 28, 1984 (p. 1)

Because the pupil was over 18 years old, § 120.13(1)(c)3 requires the pupil to personally appeal the expulsion. The parent does not have standing to file an appeal.

R. N. by the Green Bay Area School Dist.,
(546) June 3, 2005 (p. 2)

Chapter X - Appeal to SPI

Sec. 120.13(1)(c), Stats., dictates no timeline within which appeals to the SPI must be filed. Further, there is no statutory requirement that the appellant send a copy of the appeal to the involved school district.

William S. by the Tri-County Area School Bd.,
(132) June 21, 1985 (p. 12)

The SPI must dismiss an expulsion appeal in which the appealing party does not contest the facts and in which all procedural requirements were duly met, because in such a case there is no basis for an appeal.

Justin Bryan P. by the Cedarburg School Dist.,
(140) May 23, 1986 (p. 1)

But see Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (p. 9) (student and his parents did not submit further argument or grounds to contest the board's expulsion yet SPI stated, "... the facts of this case raise an issue which requires a closer look at the rationale behind earlier department cases".)

Only expulsions may be appealed to the SPI under Sec. 120.13(1)(c), Stats.

Jay S. by the Plymouth School Dist., (154) Aug.
25, 1987 (p. 5)

Anthony Clark K. by the Amery School Dist.,
(155) Sept. 2, 1987 (p. 5)

The SPI, when reviewing expulsion orders, is not bound by the decisions of prior superintendents.

Susan Marie H. by the Kenosha Unified School Dist., (157) June 28, 1988 (p. 10)

SPI authority in expulsion appeal is limited to reviewing the procedures of the expulsion process. SPI may not (in expulsion appeal) decide challenges to the district's application of special education law (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Michael P. by the Kenosha Unified School Dist., (172) Oct. 8, 1990 (pp. 4-5)

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Russell B. by the Muskego-Norway School Dist., (175) Feb. 28, 1991 (p. 10)

See also decisions numbered 186 and 196.

Madison Metro. Sch. Dist. v. Wisconsin Dept. of Public Instr., Lee Sherman Dreyfus, Interim State Superintendent of Pub. Instr., 199 Wis. 2d 1.

Matters not raised before the school board cannot be raised for the first time on appeal.

Tony R. by the Lake Geneva J1 School Dist., (259) Aug. 11, 1995 (p. 5)

Jennifer C. by the Winter School Dist., (264) Dec. 6, 1995 (p. 4)

See also decisions numbered 406, 411, 413, 420, 423, 430, 431, 432, 436, 451, 467 and 555.

“New evidence” must be submitted to the school board. It may not be raised for the first time on appeal.

Tyler M. by Silver Lake Jt 1 School Dist., (511) April 26, 2004

A.B. by the Milwaukee Public School Dist., (657) March 4, 2010

An expulsion appeal is generally not the appropriate context within which to challenge a district’s application of special education provisions to a particular pupil.

N. K. by the Marshall School Dist., (620) May 15, 2008

See also Chapter X Appeal to SPI, B, Scope of Review, 5. Exceptional Education Students and Chapter XII Exceptional Education Students, I. Request for M-Team Evaluation After Expulsion, and J. Request for M-Team Evaluation Prior to or During Expulsion Process.

Chapter X - Appeal to SPI

B. Scope of Review

1. Generally

In reviewing a school board's expulsion decision, the SPI is limited by the statute which created the appeal, in this case, Sec. 120.13(1)(c), Stats. (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Trevis P. by the Arrowhead School Dist., (121)
Sept. 13, 1984 (p. 4)

SPI may examine constitutional rights as well as those provided by Sec. 120.13(1).

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 16-17)

Constitutional rights can be waived but such waiver must be "knowing and intelligent." A student appearing without legal counsel does not waive important constitutional rights by virtue of his silence.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (pp. 16-18)

Quasi-judicial review function of SPI requires that SPI be satisfied that the proceedings were fair to both sides. SPI will not stand aside in the face of a constitutional error even if there has been no record of issue created by the student involved.

Patrick Lee Y. by the Kenosha Unified School Dist., (182) Oct. 9, 1991 (p. 19)

Does SPI have jurisdiction to decide constitutional issues? Superintendent Benson suggests that he does but refrains from doing so. He also suggests that his predecessor did so.

Donald P. by the Westby Area School Dist., (299) Aug. 9, 1996 (p. 5,6)

But Deputy SPI Anthony S. Evers, Ph.D., states otherwise:

The pupil also makes a due process argument; however, constitutional issues such as due

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process are generally beyond the scope of the State Superintendent's purview.

Drew K. by the Sparta Area School Dist., (443) Sept. 17, 2001 (footnote 2, p. 5)

Brian P. by the Sparta Area School Dist., (444) Sept. 17, 2001 (footnote 2, p. 5)

The SPI's review of an expulsion order is intended to ensure that the school board followed the required statutory procedures of Sec. 120.13(1)(c), Stats., (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Michelle R. by the Suring Pub. School Dist., (126) March 7, 1985 (pp. 3-4)

Michael S. by the Milwaukee Pub. School Bd., (128) May 10, 1985 (p. 4)

See also decisions numbered 129, 133, 134 and 137.

The SPI's review of an expulsion order is intended to ensure that the school board followed the procedural mandates of Sec. 120.13(1)(c), Stats., concerning notice, right to counsel, etc. (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 7)

Raymond M. by the Wheatland Center School Dist., (110) Feb. 25, 1983 (pp. 3-4)

See also decisions numbered 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 124, 125 and 215.

The SPI's review of an expulsion order is intended to ensure that the required statutory procedures were met, and that the board's decision was based upon one of the established statutory grounds (citing Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

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Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 6)

Jesse K. by the School Bd. of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985 (p. 6)

See also decisions numbered 132, 136, 138, 139, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 156, 157, 158, 159, 160, 161, 162, and 163.

If the statutory procedures have been followed and a statutory basis for expulsion has been shown, the SPI will not compare the actions of different school boards in expulsion matters.

Dustin L. M. by the Cedarburg School Dist., (202) Feb. 9, 1993 (p. 4)

SPI not authorized to review or overrule laws governing admission to VTAE programs in the context of an expulsion appeal.

Brad S. by the Germantown School Dist., (221) Mar. 7, 1994 (p. 4)

The Department has not viewed its jurisdiction to include the power to remand.

Dusty S. by the Mukwonago School Dist., (237) Aug. 26, 1994 (p. 7)

NOTE: "The Department" has no power. Appeal is to the Superintendent of Public Instruction.

Whether or not a school district has or followed an AODA policy is irrelevant to SPI review.

Donald P. by the Westby Area School Dist., (299) Aug. 9, 1996 (p. 5,6)

Kimberly K. by the Oak Creek-Franklin School Dist., (268) Jan. 8, 1996

Joshua R. by the Edgerton School Dist., (330) July 29, 1997 (p. 4)

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See also decisions numbered 460, 471 and 537.

The SPI is authorized to address the open or closed nature of the proceeding only if the pupil or the parent demands a closed meeting and that demand is denied.

Aron P. by the Sturgeon Bay School Dist., (341) Dec. 17, 1997

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

Lyle S. by the Whitewater School Dist., (378) April 15, 1999

See also decisions numbered 390 and 456.

Matters not raised before the school board cannot be raised for the first time on appeal.

Tony R. by the Lake Geneva J1 School Dist., (259) Aug. 11, 1995 (p. 5)

Jennifer C. by the Winter School Dist., (264) Dec. 6, 1995 (p. 4)

See also decisions numbered 406, 411, 413, 420, 423, 430, 430, 431, 432, 436, 451, 467, 585, 588, 591, 609, 613 and 614.

A transcript is required only upon request. See Sec. 120.13(1)(e)4 f.

Aaron R. by the D.C. Everest School Dist., (472) July 18, 2002

An expulsion appeal is not the appropriate venue to censure or discipline a district administrator or principal. SPI has only the authority to revoke a professional license. SPI has no authority to censure or discipline any school district employee.

Aaron R. by the D.C. Everest School Dist., (472) July 18, 2002

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Even though appeal letter raises no issues, SPI is obligated to review the record of the expulsion proceeding.

David N. by the Milton School Dist.,
(475) July 26, 2002

A pupil was offered the opportunity to reschedule a hearing because of a defective notice and declined. This issue was deemed waived for appeal.

Curtis O. by St. Croix Central School Dist.,
(489) April 17, 2003

The school board's policies are irrelevant to expulsion determinations by SPI. SPI is not authorized to review, approve and disapprove of school policy. SPI is only authorized to review expulsion decisions to assure that the pupil has been provided adequate procedural due process.

Curtis O. by St. Croix Central School Dist.,
(489) April 17, 2003

Tiffany S. by the Edgerton School Dist., (517)
June 21, 2004 (p. 4)

SPI does not have authority to determine whether police departments complied with statutory and police department policy requirements.

Zachary J. C. by Reedsburg School Dist.,
(508) April 8, 2004

SPI does not have the authority to review the board's refusal to reconsider the length of the expulsion.

A. O. by the Hudson School Dist., (570) Mar.
27, 2006 (p. 2)

SPI does not have authority to review compliance with pupil record requirements. In Section 118.127 in an expulsion appeal because the expulsion appeal is limited to determining compliance with the expulsion statutes.

Zachary J. C. by Reedsburg School Dist.,
(508) April 8, 2004

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Pursuant to Wis. Stats. § 120.13(1)(h)6, the district's determination that the conditions of readmission were violated are final and are not subject to appeal.

A. O. by the Hudson School Dist., (570) Mar. 27, 2006 (p. 2)

2. Findings of the School Board are Conclusive if Reasonable

The findings of a school board sitting as the trier of fact in an expulsion hearing are conclusive, and must therefore be upheld by a reviewing body such as the SPI, if any reasonable view of the evidence sustains them (citing State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W.2d 689 [1976]).

Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985 (p. 7)

William S. by the Tri-County Area School Bd., (132) June 21, 1985 (p. 10)

See also decisions numbered 136, 139, 142, 143, 145, 146, 148, 159, 170, 185, 188, 215, 233 and 631.

A school board's findings will be upheld if any reasonable view of the evidence sustains them.

Nicole G. by the Ashland School Dist., (390) July 1, 1999

Nathan by the Delavan-Darien School Dist., (391) July 23, 1999

See also decisions numbered 398, 401, 404, 405, 406, 407, 413, 421, 422, 423, 428, 430, 431, 432, 435, 464, 472, 473, 490, 501, 510, 511, 513, 514, 520, 522, 524, 528, 532, 538, 547, 549, 552, 553, 554, 555, 557, 558, 565, 577, 582, 583, 586, 587, 588, 591, 593, 594, 599, 600, 612, 613, 614, 616, 620, 622 and 623 and 631.

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3. Sufficiency of the Evidence

Arguments as to the sufficiency of the evidence are beyond the scope of review by the SPI.

Nancy Z. by the Janesville School Dist., (139)
May 23, 1986 (p. 5)

Roy H. by the Blair School Dist., (159) Sept.
26, 1988 (p. 9)

See also decisions numbered 170, 186, 198, 233, 238, 244, 257, 274, 289, 290, 305, 307, 323, 324, 327 332, 339, 345, 347, 351, 354, 355, 363, 364, 371, 376, 377, 378, 380, 383, 390, 391, 395, 401, 404, 405, 406, 407, 413, 421, 422, 423, 428, 430, 431, 432, 435, 454, 472, 473, 490, 510, 511, 513, 514, 520, 522, 523a, 524, 528, 532, 538, 547, 549, 550, 552, 553, 554, 555, 558 565, 579, 582, 583, 586, 587, 589, 593, 594, 603, 608, 612, 613, 614, 616, 620, 622, 623 and 631.

See decision number 602 where SPI not only fails to follow this principle but decides that evidence is “ambiguous” and states that “a reasonable view of the evidence does not sustain the board’s finding.”

In this case, the student told school authorities that she and her date had had “a couple of beers” as they drove to the prom. The pick-up truck in which she rode contained three empty beer cans in the cab, two cans sitting in the drink holders of the cab and three empty beer cans in the pick-up bed. A so-called “PBT” test was conducted. The test did not provide evidence of “being under the influence” of alcohol as the test was either “negative,” .001, or .0001. Neither was there evidence as to what these results meant. Apparently because there was no evidence of “slurred speech, erratic behavior, or sickness while at school along with evidence of consumption of alcohol” SPI determined that there was not sufficient evidence to show she was under the influence of alcohol and therefore reversed the expulsion.

Credibility and sufficiency of the evidence are beyond the scope of review of the State Superintendent.

Jeremy B. by the Waukesha School Dist., (395)
Aug. 16, 1999

Chapter X - Appeal to SPI

Dustin P. by the Flambeau School Dist., (398)
Aug. 20, 1999 (p. 5)

See also decisions numbered 406, 454, 456,
464 and 469.

The SPI must dismiss an expulsion appeal in which the appealing party does not contest the facts and in which all procedural requirements were duly met, because in such a case there is no basis for an appeal.

Justin Bryan P. by the Cedarburg School Dist.,
(140) May 23, 1986 (p. 1)

But see Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (p. 9).

4. Harshness, Duration and Severity of Expulsion

The SPI's discretion in deciding expulsion appeals is limited to determining whether the district complied with the express procedural requisites of Sec. 120.13(1)(c), Stats., and whether skeletal due process was afforded to the student facing expulsion. Therefore, the SPI is foreclosed from reviewing whether the period assessed by a school board for an expulsion is excessive or unduly harsh.

Kelly B. by the School Dist. of Three Lakes,
(100) Aug. 23, 1982 (p. 2)

Brad O. by the Madison Metropolitan School
Dist., (246) Mar. 16, 1995 (p.5)

See also decision numbered 405.

SPI has refrained from exercising his discretion, in deference to local school board authority, to "modify" the length of expulsions.

Dusty S. by the Mukwonago School Dist., (237)
Aug. 26, 1994 (p. 8)

David S. by the Elk Mound Area School Dist.,
(524) August 26, 2004

Danielle C. by the Cedarburg School Dist.,
(529) January 28, 2005

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See also decisions numbered 530, 536, 537, 540, 541, 542, 543, 544, 550, 551, 554, 558, 560, 563, 576, 579, 581, 582, 624 and 631.

It has repeatedly been held that the decision to expel a pupil and determination of length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at Sec. 120.13(1)(c) Wis. Stats.

Andrew C. by the Milwaukee Public School Dist., (386) June 11, 1999

Kevin R. by the Beaver Dam Unified School Dist., (401) Sep. 25, 1999

See also decisions numbered 402, 415 and 626, 628, 631, 634, 636, 638, 639, 640, 642, 643, 645, 648, 649, 651, 652, 653, 658, 661, 662, 663, 664 and 665.

The State Superintendent has repeatedly held that harshness and severity of discipline are matters that lie within the discretion of the school board as long as the procedural requirements of Sec. 120.13(1)(c) are complied with.

Alec J. by the Hartford Jt. #1 School Dist., (405) Jan. 3, 2000 (p. 4)

Laura S. by the Viroqua Area School Dist., (410) March 31, 2000

J. B. by the Milwaukee School Dist., (566) February 16, 2006

See also decision numbered 579.

The SPI's review of an expulsion order does not extend to matters such as the harshness or duration of the expulsion (interpreting Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

James M. B. by the Westosha School Dist., (101) Dec. 22, 1982 (pp. 2-3)

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Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 12)

See also decisions numbered 188, 189, 201, 202, 211, 246 and 252.

But see Nikkole K. by the Janesville School Dist., (238) Sept. 16, 1994 (p. 5), where SPI Benson says:

Issues such as harshness or duration of the expulsion decision have not generally been reviewed by the state superintendent. (Emphasis added.)

Issues such as harshness or duration of the expulsion decision have never been reviewed by the state superintendent since Racine Unified School District v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 (1982). Is this one of those "certain precedents" from which Superintendent Benson feels "free to depart" as suggested in Dusty S. by the Mukwonago School Dist., (237) Aug. 26, 1994 (p. 8)? If so, we can anticipate that every school board expulsion decision will be appealed.

It is a long-standing general rule that evenness or harshness of disciplinary measures are matters of discretion for the local school board. In the absence of unusual circumstances, this issue has not been reviewed by the state superintendent.

Travis M. by the Tri-County Area School Dist., (241) Nov. 8, 1994 (p. 4)

G. M. by the Monona School Dist., (628) July 18, 2008

The SPI has no authority to review whether or not the penalty of expulsion was disproportionate to the misconduct.

Susan Marie H. by the Kenosha Unified School Dist., (157) June 28, 1988 (p. 8)

Kristin J. P. by the Mukwonago Area School Dist., (185) Feb. 21, 1992 (p. 12)

Rhiannon V. by the Muskego-Norway School Dist., (188) Apr. 21, 1992 (p. 9)

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The issue of the evenness and fairness of disciplinary measures imposed by schools is one the SPI is without authority to address.

Roy H. by the Blair School Dist., (159) Sept. 26, 1988 (p. 11)

Douglas S. by the Neenah School Dist., (162) May 23, 1989 (pp. 4- 5)

See also decisions numbered 170, 186, 198, 202, 211, 223, 233, 238, 244, 246, 248, 257, 274, 289, 290, 305, 307, 323, 324, 327 332, 339, 345, 347, 351, 355, 363, 364, 371, 376, 377, 378, 383, 385, 435 and 453.

The state superintendent has consistently declined to modify the length of expulsions. The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct.

Will F. by the Lake Holcombe School Dist., (407) Feb. 21, 2000 (pp. 5-6)

Michael M. by the Appleton Area School Dist., (411) April 25, 2000 (p. 4)

See also decisions numbered 427, 429, 431, 436, 439, 440, 441, 447, 450, 453, 460, 461, 462, 463, 467, 470, 477, 480, 484, 485, 486, 488, 489, 490, 491, 493, 494, 495, 496, 499, 502, 505, 508, 512, 513, 514, 516, 518, 520, 521, 524, 528, 529, 530, 532, 535, 536, 537, 538, 540, 541, 542, 543, 544, 550, 551, 552, 553, 556, 558, 560, 563, 564, 566, 567, 571, 576, 583, 584, 588, 589, 591, 592, 595, 596, 597, 598, 604, 605, 608, 610, 617, 619, 622, 623, 630, 631, 632, 634, 636, 638, 639, 640, 642, 643, 645, 648, 649, 651, 652, 653, 658, 661, 662, 663, 664 and 665.

The SPI believes that it is inappropriate for the SPI, absent an extraordinary circumstance or a violation of procedural requirements, to second guess the appropriateness of a school board's determination.

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See also decisions numbered 470, 477, 480, 484, 485, 486, 488, 489, 490, 491, 493, 494, 495, 496, 499, 502, 508, 512, 513, 514, 516, 518, 520, 521, 524, 528, 529, 530, 532, 535, 536, 537, 538, 540, 541, 542, 543, 544, 550, 551, 552, 554, 556, 558, 563, 564, 566, 567, 571, 576, 583, 584, 588, 589, 591, 592, 595, 596, 597, 598, 604, 605, 608, 610, 617, 619, 622, 623, 630, 631 and 632.

The SPI lacks the authority to terminate an expulsion order on the ground that the punishment imposed has served its purpose and is no longer necessary (interpreting Racine Unified School Dist. v. Thompson, 106 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

David G. by the Westosha School Dist., (109)
Feb. 25, 1983 (p. 3)

The SPI lacks the authority to review the allegations of a student-appellant's parents that "a lot of favoritism" existed at the school or that alternative punishments to expulsion would have been more appropriate where all of the procedural rights due the student were afforded him (interpreting Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]).

Raymond M. by the Wheatland Center School Dist., (110) Feb. 25, 1983 (pp. 3-4)

It is not the role of the SPI to review the substance of the board's decision or to direct the district's actions in dealing with the individual student.

Patrick P. by the Mauston School Dist., (167)
April 26, 1990 (p. 9)

It is more than appropriate for the board to consider each pupil's individual circumstances when deciding whether to expel and for how long.

C. T. by the Suring School Dist., (543) May 26,
2005.

W. T. by the Suring School Dist., (544) May 26,
2005

Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review.

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Jessica H. by the Wabeno School Dist., (520)
July 1, 2004 (p. 5)

David S. by the Elk Mound School Dist., (524)
August 26, 2004 (p. 5)

See also decisions numbered 529, 535, 543, 544, 550, 554, 558, 630, 640, 645, 652, 653, 661, 663 and 665.

Because it is presumed that each pupil's situation is different, the disciplinary treatment of other students is not relevant to the superintendent's review.

Damis M. by the Cadott School Dist., (397)
Aug. 20, 1999 (p. 6)

Dustin P. by the Flambeau School Dist., (398)
Aug. 20, 1999 (p. 6)

See also decision numbered 408.

5. Exceptional Education Students

An expulsion appeal is not the proper forum in which to address compliance with special education laws. Disagreement with the findings of an M-Team may be considered at a due process hearing using special education laws.

Ernesto G. by the Waukesha School Dist., (200) Dec. 14, 1992 (p. 5)

Jason G. by the Greenfield School Dist., (364)
June 12, 1998

See also decisions numbered 609, 620 and 623.

The superintendent does not have authority in an expulsion appeal to examine the appropriateness of a manifestation team determination. There are separate procedures under the statutes for special education appeals.

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Brian M. by the Lodi School Dist., (425) Oct. 23, 2000

An expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil.

D. H. by the New Richmond School Dist., (549)
June 30, 2005 (p. 5)

D. P. by the Burlington Area School Dist., (554)
July 29, 2005 (p. 9)

See also decision numbered 560, 609 and 623.

An expulsion is not the appropriate context within which to challenge a district's application of special education provisions to a pupil where there is no evidence in the record that the student was identified as an EEN student. The issue is beyond the scope of review.

Matt H. by the Tomorrow River School Dist., (349) March 23, 1998

Robert M. by the Arcadia School Dist., (353)
April 6, 1998

See also decisions numbered 406, 423, 449, 454, 460, 583, 586, 620 and 623.

See also Chapter X Appeal to SPI, B. Scope of Review, 5. Exceptional Education Students.

However, when the pupil has an identified exceptional education need, the superintendent has reversed expulsions based on the school board's failure to consider whether the handicapping position was related to the misconduct.

Nicholas Z. by the Pittsville School Dist., (356)
April 24, 1998

Elliott G. by the Marshfield School Dist., (366)
July 2, 1998

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Where board ignored the manifestation team's findings and caused the change of placement without affording the student the required due process under IDEA, superintendent reversed.

Nicholas Z. by the Pittsville School Dist., (356)
April 24, 1998

All bases for expulsion must be subject of a manifestation determination review meeting. Where manifestation team considered only one of the bases for expulsion, expulsion must be overturned. Board may make conditional decision to expel and then refer to an IET team and thereby correct the error. If the board refers the error to an IET team and determination is made that conduct was not a manifestation of disability, board's order may be reinstated.

Shawn C. by the Mauston School Dist., (375)
Dec. 29, 1998

If the board wishes to base the expulsion on all of the misconduct contained in the notice of expulsion hearing, the IEP team must evaluate whether all of the misconduct was a manifestation of his disability.

S. P. by the Watertown School Dist., (560)
Dec. 20, 2005 (p. 4)

The pupil is a child with a disability, and there was a manifestation determination hearing held in this matter which determined that Michael's conduct was not a manifestation of his disability. Other issues concerning Michael's special education needs are beyond the scope of an expulsion appeal.

Michael M. by the Appleton Area School Dist., (411)
April 25, 2000 (p. 5)

C. At Risk Students

The application of §118.153 (At Risk Students) is not within the scope of an expulsion appeal.

John by the Whitehall School Dist., (406)
February 15, 2000

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D. Record Required

SPI review is limited to actual hearing record. If matters (documents, testimony) are not submitted to the board at the expulsion hearing, will not be considered by SPI on appeal

Jeffrey L. by the New Lisbon School Dist.,
(319) Apr. 8, 1997 (p. 4)

Chadwynn N. by the Random Lake School
Dist., (345) January 26, 1998

See also decisions numbered 338, 383 and 529.

Matters not submitted to the school board at the expulsion hearing will not be considered by the state superintendent on appeal.

Matthew C. M. by the Cedarburg School Dist.,
(274) Feb. 14, 1996 (p. 6)

Chadwynn N. by the Random Lake School
Dist., (345) January 26, 1998

See also decisions numbered 338, 383 and 529.

Exhibits presented for the first time during appeal will not be considered by the superintendent. Exhibits must be made a part of the record during the expulsion hearing.

John by the Whitehall School Dist., (406)
February 15, 2000

Section 120.13(1)(e) requires that a transcript be prepared and given to the pupil and his/her parent only when the board uses an independent hearing officer or panel to hear the expulsion hearing. If the board hears the expulsion, it is not required to prepare a transcript.

A transcript is required only upon request. See Sec. 120.13(1)(e)4 f.

Aaron R. by the D.C. Everest School Dist.,
(472) July 18, 2002

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Section 120.13(1)(c)(3) requires the school board to keep written minutes of the hearing. It does not require an audiotape of the hearing. Even if the audiotape is incomplete, there is no statutory violation.

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005

See also Chapter IV, X. Minutes/Record.

E. Effect of Failure to Respond to DPI Requests During Appeal

The SPI dismissed an appeal from an expulsion order after the student-appellant's counsel failed to respond within 20 days to a notice sent by the SPI informing him of the necessity of such action under Wis. Admin. Code S. PI 1.07.

Brina C. by the Plymouth School Dist., (102) Jan. 17, 1983 (p. 1)

Janeen J. by the Plymouth School Dist., (103) Jan. 17, 1983 (p. 1)

See also decisions numbered 104 and 105.

The SPI dismissed an appeal from an expulsion order after the student-appellant's parents failed to respond within 20 days to a notice sent by the SPI informing them of the necessity of such action under Wis. Admin. Code S. PI 1.07.

James M. B. by the Westosha School Dist., (108) Feb. 25, 1983 (p. 1)

The SPI dismissed an appeal from an expulsion order after the student failed to respond within 20 days to a notice sent by the SPI informing her of the necessity of such action.

R. N. by the Green Bay Area School Dist., (546) June 3, 2005 (p. 1)

F. No Reinstatement Pending Appeal

Section 120.13(1)(c) states in part:

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. . . The decision of the school board shall be enforced while the state superintendent reviews the decision. . .

NOTE: This language was added to Section 120.13(1)(c) by 1987 Wisconsin Act 88. Prior to this amendment, an administrative regulation (PI 1.09) authorized the SPI to grant temporary reinstatement of an expelled student pending a final determination of the appeal. After the statute was amended, the regulation was repealed (effective January 1, 1988). The circumstances under which SPI allowed reinstatement under the now repealed regulation are discussed in the following decisions:

James M. B. by the Westosha School Dist., (101) Dec. 22, 1982 (p. 2)

Kathleen W. by the Tri-County Area School Dist., (127) Mar. 28, 1985 (p. 1)

See also decisions numbered 141, 152 and 153.

G. Suspensions

The SPI has no statutory authority to review suspensions made under Sec. 120.13(1)(b), Stats., and therefore lacks the jurisdiction to address the issue of whether a school board violated a student-appellant's rights under that statute.

Jesse K. by the School Bd. of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985 (pp. 6-7)

Nancy Z. by the Janesville School Dist., (139) May 23, 1986 (pp. 6- 7)

See also decisions numbered 341, 359, 360 and 461.

Only expulsions may be appealed to the SPI under Sec. 120.13(1)(c), Stats.

Jay S. by the Plymouth School Dist., (154) Aug. 25, 1987 (p. 5)

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Anthony Clark K. by the Amery School Dist.,
(155) Sept. 2, 1987 (p. 5)

Superintendent's review of expulsions is limited to Subsection (c) of Section 120.13 (1) Stats. Suspensions are not reviewable within the context of an expulsion appeal.

Madison Metropolitan School Dist. v. Lee Sherman Dreyfus, 199 Wis. 2d, 543 N.W.2d 543, (Ct. App. 1995)

Telsea M. by the East Troy Community School Dist., (408) Feb. 24, 2000 (p. 6)

The state superintendent lacks jurisdiction to review suspensions. The state superintendent's jurisdiction for review only covers the expulsion proceedings, which commence with the expulsion hearing notice.

Athena S. by the School Dist. of Omro, (431) April 17, 2001 (p. 3)

The SPI has no statutory authority to review suspensions made under Sec. 120.13(1)(b), Stats., and therefore lacks the jurisdiction to address the issue of whether a school board violated a student-appellant's rights under that statute by suspending him for a three-day period followed consecutively by a twelve-day period in anticipation of expulsion.

Jesse K. by the School Board of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985 (pp. 6-7)

See also decisions numbered 341, 359 and 360.

An expulsion appeal is not the appropriate context within which to challenge a district's application of special education provisions (manifestation determination) to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. 120.13(1)(c).

L. F. by the Mauston School Dist., (583) January 18, 2007

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H. Mootness

The SPI must dismiss an appeal in which the controversy involved is moot. For example, SPI decision (June 17, 1982) made after period of expulsion (May 28, 1982). Matter is therefore moot.

Russell T. by the School Dist. of Tigerton, (99)
June 17, 1982 (p. 2)

Rescission of expulsion order by school board renders expulsion appeal moot.

Sheryl T. by the Winter School Board, (245)
Mar. 6, 1995 (p. 2)

Christopher D. by the Hartland/Lakeside Joint
No. 3 School Dist., (270) Jan. 18, 1996 (p. 1)

See also decisions numbered 275, 285, 291,
292, 295, 387, 388, 389, 457 and 526.

Even though student was allowed back to school, the fact that expulsion had not been removed from his school records rendered the appeal not moot.

Raymond I. C. by Mineral Point School Dist.
Bd. of Education, (440) July 27, 2001

Subsequent to expulsion hearing, student was evaluated and determined to have an exceptional educational need. Student was readmitted to school under a behavior contract. Appeal of expulsion therefore moot.

Michael D. by the Mausten School Dist., (333)
Sept. 10, 1997

I. Withdrawal of Appeal

New expulsion hearing granted. Appeal therefore withdrawn

Carol T. by the Central-Westosha School Dist.,
(343) January 13, 1999

Expulsion reconsidered. Appeal therefore moot.

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Cassandra W. by the Mauston School Dist.,
(346) February 20, 1998

Appeal withdrawn at parent's request.

Erin R. by the Hayward Community School
Dist., (357) May 12, 1998

Expulsion rescinded by board because it did not provide sufficient notice of the expulsion hearing. Appeal is therefore moot.

Nicole P. D. by the Marshfield School Dist. Bd.
of Education, (442) August 16, 2001

Expulsion rescinded. Student identified as emotionally disturbed and offered placement at adolescent needs center. Parents withdrew appeal.

Michael N. by the Wonawoc Union Center
School Dist., (367) July 27, 1998

Board reconsidered and rescinded expulsion order referring matter to IEP team for review.

Travis O. by the Lake Geneva-Genoa City
Union School Dist., (370) August 21, 1998

Pupil withdrew appeal, therefore expulsion appeal is dismissed.

Tommie L. by the Brown Deer School Dist.,
(392) July 29, 1999

Amanda H. by the Prairie du Chien School
Dist., (400) Aug. 25, 1999

See also decisions numbered 414, 458 and 523a.

Pupil and board reached an agreement concerning the board's expulsion order. The pupil withdrew her appeal.

Brittany B. by the Westfield School Dist.,
(523a) August 17, 2004

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J. Petition for Rehearing

SPI will consider a petition for rehearing on appeal applying the procedures contained in Wis. Stats. Section 227.49. The aggrieved party must allege the original decision was either (1) a material error of law or (2) a material error of fact or (3) the discovery of new evidence sufficiently strong to reverse or modify the order and which could not have been previously discovered by due diligence.

Adam P. by the Tri-County Area School Dist.
Bd. of Education, (450) Feb. 11, 2002

K. Mediation

The superintendent does not have a mechanism or authority for mediation of expulsion decisions. SPI authority is limited to that contained in Section 120.13(1)(c)3. To either approve, reverse or modify the board's decision, see decision below.

Curtis O. by St. Croix Central School Dist.,
(489) April 17, 2003

XI. Effect of Expulsion

The legislature, in making separate provisions for suspension and expulsion in Sec. 120.13(1)(b) and sec. 120.13(1)(c) respectively, did not intend to afford expelled students the protection preserving the right to take missed examinations guaranteed to suspended students.

Tom C. by the School Dist. of Lake Holcombe,
(115) Oct. 18, 1983 (p. 4)

XII. Exceptional Education Students

A. All Changes in Placement (Including Expulsion) Must Be Made in Accordance with Procedures Of EHA and Ch. 115, Stats.

Exceptional education needs (EEN) students are entitled to have all changes of placement made in accordance with the procedures set forth in the Education for All Handicapped Children Act (EHA) and Chapter 115, Stats. Expulsion constitutes a change of placement under the EHA.

Anita P. by the School Dist. of Janesville, (124)
Feb. 5, 1985 (p. 5)

Joe M. by the School Dist. of Milton, (125) Feb.
22, 1985 (p. 7)

Chad B. by the Janesville School Dist., (202)
Apr. 1, 1993 (p. 5)

Students determined to have a so-called "504" disability have the same protection.

John Michael N. by the Random Lake School
Dist., (331) Aug. 5, 1997 (p. 4)

See also, Honig v. Doe, 484 U.S. 305 (1988).

However, 29 U.S.C. Sec. 705(20)(C)(iv), states that a local education agency (LEA) may take disciplinary action pertaining to the use of illegal drugs or alcohol against any student who is an individual with a disability and who is currently engaging in the illegal use of drugs or alcohol to the same extent that such disciplinary action is taken against students who are not disabled. This statute also states that due process procedures in 34 CFR 104.36 do not apply. Thus, federal law allows the board to expel a section 504 disabled pupil for his use of illegal drugs.

Michael E. K. by the Burlington Area School
Dist., (449) Feb. 13, 2002

EEN children are afforded additional procedural safeguards to those granted by Sec. 120.13(1)(c), Stats., under the Education for All Handicapped Children Act (EHA), 20 U.S.C. sec. 1401, et seq. Among the numerous rights afforded handicapped children under the Act and the regulations are: (1) the right to remain in same placement until the

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resolution of one's special education complaint; (2) the right to have all changes in placement effectuated in accordance with prescribed procedures; (3) the right to an education in the least restrictive environment; and, (4) the right to an appropriate public education (citing Blue v. New Haven Board of Education, No. N-81-41, Slip Op. [D.C. Conn. March 23, 1981], 3 EHLR 552:401, 404).

Marlene S. v. Sheboygan School Dist., (85)
Nov. 1, 1993 (p. 10)

Anita P. by the School Dist. of Janesville, (124)
Feb. 5, 1985 (p. 5)

Joe M. by the School Dist. of Milton, (125) Feb.
22, 1985 (p. 6)

When a parent does not consent to an EEN evaluation of his or her child, the applicable rules (Sections PL 11.10(1)(c) and 11.04(1)(a)3., Wis. Adm. Code) permit a district itself to request a due process hearing to contest the consent refusal.

Michael C. G. by the Hudson School Dist.,
(219) Feb. 11, 1994 (p. 8)

B. Conduct Indicative of EEN May Not Be Grounds for Expulsion

A school board cannot impose expulsion for conduct or behavior indicative of EEN.

William S. by the Suring School Dist., (98) June
17, 1982 (p. 2, footnote 1)

C. Required Referral to M-Team to Determine If Causal Relationship Between Handicap and Misconduct At Issue Exists

A school board must refer an expulsion case involving an EEN student to an M-Team or comparable professional staffing arrangement to determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition.

Anita P. by the School Dist. of Janesville, (124)
Feb. 5, 1985 (p. 6)

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Joe M. by the School Dist. of Milton, (125) Feb. 22, 1985 (p. 7)

Glenn P. by the School Dist. of Wauwatosa, (135) Feb. 24, 1986 (pp. 4-6)

A school board must refer an expulsion case involving a sec. 504 student to an M-Team or comparable special staffing arrangement to determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition.

John Michael N. by the Random Lake School Dist., (331) Aug. 5, 1997 (p. 4)

But must be an identified exceptional educational need. Expulsion process is not the appropriate context within which to challenge the district's application of special educational provisions to a particular pupil.

Benjamin L. by the Maple School Dist., (214) Dec. 28, 1993 (p. 6)

Brad M. V. by the Boyceville Community School Dist., (233) June 19, 1994 (p. 5)

See also decisions numbered 241, 277 and 318.

It is not required that an EEN evaluation be done before a finding can be made that a pupil is not a student with EEN if student has not been previously identified as a student with EEN.

Brad M. V. by the Boyceville Community School Dist., (233) June 29, 1994 (p. 5)

In expulsion cases involving an EEN student, a school board has no discretion but to rely upon the judgment of the M-Team or other appropriate staffing as to the issue of whether any causal relationship exists between the misconduct at issue and the student's handicapping condition.

Anita P. by the School Dist. of Janesville, (124) Feb. 5, 1985 (p. 6)

Joe M. by the School Dist. of Milton, (125) Feb. 22, 1985 (p. 7)

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Glenn P. by the School Dist. of Wauwatosa,
(135) Feb. 24, 1986 (p. 6)

In expulsion cases involving a so-called “504” student, a school board has no discretion but to rely upon the judgment of the M-Team or other appropriate staffing as to the issue of whether any causal relationship exists between the misconduct at issue and the student’s handicapping condition.

Expulsion appeal is not the context within which to review an appeal of a section 504 determination.

Nicole R. by the Granton Area School Dist.,
(301) Sept. 19, 1996 (p. 4)

John Michael N. by the Random Lake School
Dist., (331) Aug. 5, 1997 (p. 4)

See also decision numbered 554.

If a child has an *identified* exceptional educational need, SPI will reverse an expulsion decision when a board fails to consider whether the pupil’s handicapping condition was related to the misconduct. With regard to all other aspects of special education law, however, SPI has determined that an expulsion appeal is not the appropriate context in which to challenge the district’s application of special education requirements to a particular pupil.

Anita P. by the Janesville School Dist., (124)
Feb. 5, 1985

Matthew C. by the Lake Geneva-Genoa City
School Dist., (277) Mar. 12, 1996

See also decisions numbered 172, 228, 292,
301, 326 332, 385, 529 and 560.

In expulsion cases involving an EEN student, a school board may either make a conditional decision to expel the student and then refer the case to an M-Team or comparable professional staffing to make the causal relationship determination and thus decide whether the expulsion can be carried out, or vice versa. Neither the rights afforded under the applicable handicapped legislation nor the constraints of procedural due process

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would appear to dictate any particular order, provided that continuity of placement is maintained during the pendency.

Glenn P. by the School Dist. of Wauwatosa,
(135) Feb. 24, 1986 (p. 6)

Michael C. G. by the Hudson School Dist.,
(219) Feb. 11, 1994 (p. 9)

When a child with a disability is facing expulsion, it is appropriate for the expulsion fact-finder to make a finding as to whether the manifestation determination was made and what that determination was. It is not the responsibility of the fact-finder to delve into the appropriateness of the findings.

N. C. by the Kenosha Unified School Dist.,
(547) June 17, 2005 (p. 4)

If the board wishes to base the expulsion on all of the misconduct contained in the notice of expulsion hearing, the IEP team must evaluate whether all of the misconduct was a manifestation of his disability.

S. P. by the Watertown School Dist., (560)
Dec. 20, 2005 (p. 4)

If the M-Team or comparable professional staffing determines that no causal relationship exists between the misconduct at issue and the student's handicapping condition, the board may proceed to expel the student as it would a non- EEN child (citing Doe v. Koger, 480 F. Supp. 225 [N.D. Ind. 1979]).

Glenn P. by the School Dist. of Wauwatosa,
(135) Feb. 24, 1986 (p. 5)

Marc G. by the Maple School Dist., (213) Dec.
20, 1993 (p. 2)

Matthew C. M. by the Cedarburg School Dist.,
(274) Feb. 14, 1996 (p. 5)

See also Brian V. by the Shorewood School
Dist., (195) June 8, 1992 (pp. 3-4).

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If student is dissatisfied with the district determination as to whether his misconduct was a manifestation of his disability, he may use the special education due process appeal procedures provided under subchapter V of ch. 115, Stats., and PI ch. 11, Wis. Adm. Code.

Matthew C. M. by the Cedarburg School Dist.,
(274) Feb. 14, 1996 (p. 5)

The superintendent does not have authority in an expulsion appeal to examine the appropriateness of a manifestation team determination. There are separate procedures under the statutes for special education appeals.

Brian M. by the Lodi School Dist., (425) Oct.
23, 2000

D. Qualifications of M-Team

In meeting its obligation to an EEN student during the expulsion process and in relying on the report of the M-Team or comparable professional staffing, the school board must ensure that the members of the M-Team or comparable professional staffing are qualified to make the causal relationship determination and that the determination was, in fact, clearly made.

Glenn P. by the School Dist. of Wauwatosa,
(135) Feb. 24, 1986 (p. 5)

In expulsion cases involving an EEN student, if the composition of the M-Team which is directed to report its finding to the school board is in accordance with federal and state handicapped law, the school board will be assured that a professional staffing has been assembled which is competent to make the determination necessary to report to the board.

Glenn P. by the School Dist. of Wauwatosa,
(135) Feb. 24, 1986 (p. 5)

E. If M-Team Determines No Causal Relationship to Exist, Board May Proceed to Expel

Where conduct is determined by meeting of parents, student, school's M-Team and school principal to be unrelated to EEN, conduct may be grounds for expulsion.

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William S. by the Suring School Dist., (98) June 17, 1982 (p. 2)

Brian V. by the Shorewood School Dist., (195) June 8, 1992 (pp. 3- 4)

If the M-Team or comparable professional staffing determines that no causal relationship exists between the misconduct at issue and the student's handicapping condition, the board may proceed to expel the student as it would a non- EEN child (citing Doe v. Koger, 480 F. Supp. 225 [N.D. Ind. 1979]).

Glenn P. by the School Dist. of Wauwatosa, (135) Feb. 24, 1986 (p. 5)

Marc G. by the Maple School Dist., (213) Dec. 20, 1993 (p. 2)

See also Brian V. by the Shorewood School Dist., (195) June 8, 1992 (pp. 3-4).

In order to challenge a finding by the manifestation determination team, the pupil must avail himself of the due process appeal procedures provided under subchapter V of chapter 115 Wis. Stats. and PI chapter 11, Wis. Admin. Code

Michael A. W. by Oak Creek School Dist., (499) August 5, 2003

F. Burden on Board to Show Compliance With Required Exceptional Education Law Procedures

If the board makes no finding, based on a professional staffing, that student's exceptional education need has no relation to the behavior which resulted in her expulsion, the board's order of expulsion will be reversed.

Anita P. by the School Dist. of Janesville, (124) Feb. 5, 1985 (p. 7)

Danielle C. by the Cedarburg School Dist., (529) January 28, 2005

If a school district intends to except itself from the procedural obligations imposed by the Education for All Handicapped Children Act (EHA) when

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expelling a student with exceptional education needs, then the district must establish at a minimum that it has complied with the procedural requirements of the law.

Joe M. by the School Dist. of Milton, (125) Feb. 22, 1985 (p. 9)

In expulsion cases involving a student with an exceptional education need, failure by a school board to perform its obligation to refer the case to an M-Team or comparable professional staffing to determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition renders the board's expulsion decision invalid.

Joe M. by the School Dist. of Milton, (125) Feb. 22, 1985 (p. 10)

G. Effect of EEN Student's Non-Participation In EEN Program

It is the policy of the State of Wisconsin that students cannot drop out and re-enroll in school at a whim. This is so whether the student is EEN or not (see Sec. 118.15[1][c], Stats.). Therefore, a student facing expulsion who embarks on a strategy of dropping out of school and entering the Marines and whose hearing strategy was conducted accordingly cannot start over with a different strategy on appeal when other circumstances intervened to prevent him from achieving his goal.

Bradley B. by the Spooner School Dist., (107) Feb. 15, 1983 (p. 8)

Once a student or his parent removes the student from participation in a special education program, then the special protections of that program no longer apply to the student, and the student can be expelled from school the same as any regular education student.

Lavell A. by the Kenosha Unified School Dist., (147) Jan. 12, 1987 (p. 8)

Roy H. by the Blair School Dist., (159) Sept. 26, 1988 (p. 10)

The expulsion order would be stayed as long as the student participated in the special education program recommended for him or her.

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Jerrett N. by the Baraboo School Dist., (188)
Dec. 23, 1991 (p. 7)

Brian V. by the Shorewood School Dist., (195)
June 8, 1992 (p. 4)

H. Effect of Board's Failure to Comply With EHA and Ch. 115, Stats.

In expulsion cases involving a student with an exceptional education need, failure by a school board to perform its obligation to refer the case to an M-Team or comparable professional staffing to determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition renders the board's expulsion decision invalid.

Joe M. by the School Dist. of Milton, (125) Feb.
22, 1985 (p. 10)

However, an expulsion appeal is not the appropriate context within which to challenge the district's application of special education provisions to a particular pupil.

Benjamin L. by the Maple School Dist., (214)
Dec. 28, 1993 (p. 6)

Brad M. V. by the Boyceville Community School Dist., (233) June 29, 1994 (p. 5)

See also decisions numbered 172, 241, 256, 547, 549 and 554.

I. Request for M-Team Evaluation After Expulsion

If a parent believes their son requires special education services or a section 504 plan to accommodate a disability, the parent must contact the school district.

Dustin L. by Wisconsin Rapids School Dist.,
(470) June 27, 2002

Parent may request multi-disciplinary evaluation for student even though student has been expelled.

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Michael P. by the Kenosha Unified School Dist., (172) October 8, 1990 (p. 5)

Shawn H. by the Central/Westosha High School Dist., (196) July 1, 1992 (p. 4)

Brandon D. by the De Soto Area School Dist., (206) May 3, 1993 (pp. 5-6)

If parent disagrees with the findings of the M-Team, he or she may request a due process hearing to challenge that decision using special education laws and may also request an independent evaluation of his or her child (to be done at the school district's expense if the conditions in Sec. PI 11.08, Wis. Adm. Code are met).

Shawn H. by the Central/Westosha High School Dist., (196) July 1, 1992 (p. 4)

Ernesto G. by the Waukesha School Dist., (200) Dec. 14, 1992 (p. 5)

Post-expulsion argument that District should have screened, referred and identified student as a child with EEN is beyond scope of expulsion appeal.

Dwayne C. by the Milwaukee Public School Dist., (249) May 8, 1995 (p. 4)

LeRoy H. by the Kewaunee School Dist., (282) Mar. 27, 1996 (p. 4)

J. Request for M-Team Evaluation Prior To or During Expulsion Process

If a parent believes their son requires special education services or a section 504 plan to accommodate a disability, the parent must contact the school district.

Dustin L. by Wisconsin Rapids School Dist., (470) June 27, 2002

Before an expulsion, a parent may request an evaluation, and the district is required to timely process that request pursuant to the particular rules and time frames governing special education in this state. However, alleged error in processing that request may be reviewed by the DPI in the context

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of a complaint under the Individuals With Disabilities Education Act, rather than in the context of an expulsion appeal.

During an expulsion proceeding, a parent may request an evaluation and the district is required to timely process that request pursuant to the particular rules and time frames governing special education.

Ernesto G. by the Waukesha School Dist., (200)
Dec. 14, 1992 (p. 5)

Chad B. by the Janesville School Dist., (203)
Apr. 1, 1993 (p. 6)

See also decisions numbered 172, 214, 243,
and 322.

It has been consistently held that an expulsion appeal is not the proper forum to initially address special education issues.

Travis M. by the Tri-County School Dist., (241)
Dec. 8, 1994

Tony R. by the Lake Geneva J1 School Dist., (259)
Aug. 11, 1995 (p. 5)

Jesse P. by the Hustisford School Dist., (293)
June 10, 1996 (p. 4)

See also decisions numbered 472, 529, 549,
560, 583, 586, 601, 618, 623, 630, 641, 646,
655, 656, 662, 664 and 665.

An expulsion is not the appropriate context within which to challenge a district's application of special education provisions to a pupil where there is no evidence in the record that the student was identified as an EEN student.

Matt H. by the Tomorrow River School Dist., (349)
March 23, 1998

Robert M. by the Arcadia School Dist., (353)
April 6, 1998

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See also decisions numbered 454, 470, 472, 473, 488, 489, 498, 510, 529, 560, 623, 641, 646, 655, 656, 662, 664 and 665.

However, when the pupil has an identified exceptional education need, the superintendent has reversed expulsions based on the school board's failure to consider whether the handicapping position was related to the misconduct.

Nicholas Z. by the Pittsville School Dist., (356)
April 24, 1998

Danielle C. by the Cedarburg School Dist.,
(529) January 28, 2005

Where board ignored the manifestation team's findings and caused the change of placement without affording the student the required due process under IDEA, superintendent reversed.

Nicholas Z. by the Pittsville School Dist., (356)
April 24, 1998

Where pupil has an identified exceptional education need, the superintendent has reversed expulsion decisions in which the board failed to consider whether the pupil's handicapping condition was related to the misconduct.

Elliott G. by the Marshfield School Dist., (366)
July 2, 1998

Danielle C. by the Cedarburg School Dist.,
(529) January 28, 2005

All bases for expulsion must be subject of a manifestation determination review meeting. Where manifestation team considered only one of the bases for expulsion, expulsion must be overturned. Board may make conditional decision to expel and then refer to an I.E.P. team and thereby correct the error. If the board refers the error to an I.E.P. team and determination is made that conduct was not a manifestation of disability, board's order may be reinstated.

Shawn C. by the Mauston School Dist., (375)
Dec. 29, 1998

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Jason G. by the Greenfield School Dist., (364)
June 12, 1998

K. EEN Evaluation As Condition for Readmission

The district lacks authority to condition readmission on an EEN evaluation.

Chad B. by the Janesville School Dist., (203)
Apr. 1, 1993 (p. 5)

L. Students Evaluated to be Without an Exceptional Need

When a student has been evaluated and found to have no exceptional educational need, issues having to do with that determination are not within the scope of an expulsion appeal.

Jesse M. by the Tri County Area School Dist.,
(385) June 11, 1999

John by the Whitehall School Dist., (406) Feb.
15, 2000

See also decisions numbered 424 and 529.

M. Other Issues Concerning EEN Students

Other issues concerning special education needs of EEN students are beyond the scope of an expulsion appeal when a manifestation determination was held.

Michael M. by the Appleton Area School Dist.,
(411) April 25, 2000

An expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of § 120.13 (1)(c).

Brian M. by the Lodi School Dist., (425)
November 6, 2000 (p. 4)
Michael E. K. by the Burlington Area School
Dist., (449) Feb. 13, 2002

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See also decisions numbered 547 and 549.

XIII. Appeal to Court

Section 120.13(1)(c), Stats., states in part:

. . . An appeal from the decision of the State Superintendent may be taken within 30 days to the circuit court of the county in which the school is located. . .

XIV. Correction of Prior Procedural Errors

Subsequent to SPI reversal of expulsion for board's failure to find (a) one of four alternate grounds for expulsion, and (b) that the interests of the school district demanded the expulsion of the student, the board met again (without notice to the student). The board corrected its errors and the expulsion was upheld by SPI.

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 4)

Subsequent to SPI reversal of expulsion for board's failure to find that the interests of the school demanded the expulsion of the student, the board met again (without notice to the student). The board corrected its error and SPI upheld the expulsion.

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (pp. 5- 6)

Double jeopardy is a criminal law concept not applicable to expulsion hearings.

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (p. 5)

Paul R. by the East Troy Community School
Dist., (262)

NOTE: A district need not give up the expulsion effort simply because SPI has reversed an expulsion or because it (the district) discovers an error during the process of expulsion. The district need only start again where error was made, correct its error, and proceed with the process.

Jared L. by the Northland Pines School Dist.,
(283) Mar. 29, 1996 (p. 4)

Adam S. by the East Troy Community School
Dist., (304) Nov. 25, 1996 (p. 7)

Justin P. by the Cornell School Dist., (328)
June 26, 1997 (p. 4)

See also decisions numbered 358, 445, 459,
460, 507, 534, 559, 560, 590 and 625.

Chapter XIV – Correction of Prior Procedural Errors

A district may remedy an error with respect to notice of the expulsion hearing by providing proper notice of the expulsion hearing, rehearing the expulsion and providing proper notice of the expulsion decision.

Nicholas L.B. by the Bayfield school Dist.
(506) Feb. 3, 2004

O. S. by the Racine Unified School Dist., (548)
June 27, 2005 (p. 6)

See also decisions numbered 559, 560, 590,
611, 640, 642 and 656.

Subsequent to SPI reversal of expulsion for board's failure to (a) provide findings regarding the grounds for expulsion, (b) provide finding that the interest of the school demand expulsion, (c) provide an order of expulsion sent to the pupil and to his parent, the board may choose to correct its procedural errors by making the necessary findings.

Clarence S. by the Bonduel School Dist., (320)
April 10, 1997 (p. 4)

A correcting decision must be made by members who were present at the evidentiary hearing. . . .

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 5)

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (p. 5)

Mark by the Marinette School Dist., (236) Aug.
26, 1994 (p. 4)

See also decision number 592.

... and must be based on the evidence submitted at the evidentiary hearing.

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 5)

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (p. 5)

Chapter XIV – Correction of Prior Procedural Errors

Absent prejudice to the student, board may meet to deliberate without notice of the meeting to the student. SPI has recommended that such notice be given.

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 6)

The board, however, does not have to provide a full five days notice since a special meeting, not an expulsion hearing, is being conducted and the board is not accepting additional evidence.

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (pp. 5- 6)

There is no time limit on when a decision must be made after a hearing.

Joshua S. by the D. C. Everest School Dist.,
(173) Oct. 26, 1990 (p. 5)

Nicole P. by the Crandon School Dist., (193)
May 29, 1992 (p. 5)

See also decisions numbered 413, 578 and 583.

XV. Post-Expulsion Enrollment in Another School District

Sec. 120.13(1)(f) states as follows:

(f) No school board is required to enroll a pupil during the term of his or her expulsion from another school district. Notwithstanding s. 118.125(2) and (4), if a pupil who has been expelled from one school district seeks to enroll in another school district during the term of his or her expulsion, upon request the school board of the former school district shall provide the school board of the latter school district with a copy of the expulsion findings and order, a written explanation of the reasons why the pupil was expelled and the length of the term of the expulsion.

School district's have authority to refuse to accept any student during the term of his/her expulsion. Difficulty in enrolling in another school is not a basis for reversal.

Nathaniel S. by the Wausau School Dist., (350)
March 25, 1998

C. M. by the Kenosha School Dist., (616) April
17, 2008

D.J. by the Germantown School Dist., (618)
April 7, 2009

See also decision number 659.

School district must enroll a student who is a resident of the district and not currently under an expulsion order entered by another Wisconsin public school district.

Alexander P. by the Oak Creek Franklin School
Dist. Board of Education (372) November 23,
1998

It should be noted that, if the pupil had enrolled in another public school under the open enrollment program, that school district would have received his pupil records. Upon receipt of those records, the new district would have learned of his expulsion. Once a pupil is expelled by a

Wisconsin public school, any public school in Wisconsin could refuse his admission during the term of his expulsion.

Barrett S. by the Fox Point J2 School Dist.,
(424) Oct. 6, 2000 (p. 6, footnote 2)

CHRONOLOGICAL LIST OF DECISIONS

In re Expulsion from the Suring School Dist. of William S., Decision and Order No. 98 (State Superintendent of Pub. Instr. June 17, 1982)

In re Expulsion from the School Dist. of Tigerton of Russell T., Decision and Order No. 99 (State Superintendent of Pub. Instr. June 17, 1982)

In re Expulsion from the School Dist. of Three Lakes of Kelly B., Decision and Order No. 100 (State Superintendent of Pub. Instr. August 23, 1982)

In re Expulsion of James M. B. by the Westosha School Dist., Decision and Order No. 101 (State Superintendent of Pub. Instr. Dec. 22, 1982)

In re Expulsion of Brina C. by the Plymouth School Dist., Decision and Order No. 102 (State Superintendent of Pub. Instr. Jan. 17, 1983)

In re Expulsion of Janeen J. by the Plymouth School Dist., Decision and Order No. 103 (State Superintendent of Pub. Instr. Jan. 17, 1983)

In re Expulsion of Janell J. by the Plymouth School Dist., Decision and Order No. 104 (State Superintendent of Pub. Instr. Jan. 17, 1983)

In re Expulsion of Cletus F. J. by the Milwaukee School Dist., Decision and Order No. 105 (State Superintendent of Pub. Instr. Jan. 18, 1983)

In re Expulsion from the Milwaukee School Dist. of Sean H., Decision and Order No. 106 (State Superintendent of Pub. Instr. Feb. 10, 1983)

In re Expulsion from Spooner School Dist. of Bradley B., Decision and Order No. 107 (State Superintendent of Pub. Instr. Feb. 15, 1983)

In re Expulsion of James M. B. by the Westosha School Dist., Decision and Order No. 108 (State Superintendent of Pub. Instr. Feb. 25, 1983)

In re Expulsion of David G. by the Westosha School Dist., Decision and Order No. 109 (State Superintendent of Pub. Instr. Feb. 25, 1983)

In re Expulsion of Raymond M. by the Wheatland Center School Dist., Decision and Order No. 110 (State Superintendent of Pub. Instr. Feb. 25, 1983)

In re Expulsion of Earl N. by the Milwaukee School Dist., Decision and Order No. 111 (State Superintendent of Pub. Instr. March 3, 1983)

In re Expulsion of James M. by the Webster School Dist., Decision and Order No. 112 (State Superintendent of Pub. Instr. May 9, 1983)

In re Expulsion of Eugene N. by the Flambeau School Dist., Decision and Order No. 113 (State Superintendent of Pub. Instr. May 9, 1983)

In re Expulsion of Robert M. by the School Dist. of Port Edwards, Decision and Order No. 114 (State Superintendent of Pub. Instr. June 7, 1983)

In re Expulsion of Tom C. by the School Dist. of Lake Holcombe, Decision and Order No. 115 (State Superintendent of Pub. Instr. Oct. 18, 1983)

In re Expulsion of John C. B. by the Milwaukee School Dist., Decision and Order No. 116 (State Superintendent of Pub. Instr. Oct. 31, 1983)

In re Expulsion of John R. by the Cochrane-Fountain City School Dist., Decision and Order No. 117 (State Superintendent of Pub. Instr. Feb. 9, 1984)

In re Expulsion of James by the Hortonville School Dist., Decision and Order No. 118 (State Superintendent of Pub. Instr. March 28, 1984)

In re Expulsion of David by the Hortonville School Dist., Decision and Order No. 119 (State Superintendent of Pub. Instr. March 28, 1984)

In re Expulsion of Teresa Lynn by the Janesville School Dist., Decision and Order No. 120 (State Superintendent of Pub. Instr. June 1, 1984)

In re Expulsion of Trevis P. by the Arrowhead School Dist., Decision and Order No. 121 (State Superintendent of Pub. Instr. Sept. 13, 1984)

In re Expulsion of Richard W., Jr. by the Central High School Dist. of Westosha, Decision and Order No. 122 (State Superintendent of Pub. Instr. Sept. 13, 1984)

In re Expulsion of Michael W., Jr. by the Boyceville Community School Dist., Decision and Order No. 123 (State Superintendent of Pub. Instr. Nov. 28, 1984)

In re Expulsion of Anita P. by the School Dist. of Janesville, Decision and Order No. 124 (State Superintendent of Pub. Instr. Feb. 5, 1985)

In re Expulsion of Joe M. by the School Dist. of Milton, Decision and Order No. 125 (State Superintendent of Pub. Instr. Feb. 22, 1985)

In re Expulsion of Michelle R. by the Suring Public School Dist., Decision and Order No. 126 (State Superintendent of Pub. Instr. March 7, 1985)

In re Expulsion of Kathleen W. by the Tri-County Area School Board, Decision and Order No. 127 (State Superintendent of Pub. Instr. March 28, 1985)

In re Expulsion of Michael S. by the Milwaukee Public School Board, Decision and Order No. 128 (State Superintendent of Pub. Instr. May 10, 1985)

In re Expulsion of Peter J. by the Hamilton School Dist., Decision and Order No. 129 (State Superintendent of Pub. Instr. May 10, 1985)

In re Expulsion of Kathleen W. by the Tri-County Area School Board, Decision and Order No. 130 (State Superintendent of Pub. Instr. May 10, 1985)

In re Expulsion of Jesse K. by the School Board of Joint Dist. No. 2 of the City of Sun Prairie, Towns of Blooming Grove, Bristol, Burke, Cottage Grove, Sun Prairie and York, Dane County and Town of Hampden, Columbia County, Decision and Order No. 131 (State Superintendent of Pub. Instr. June 17, 1985)

In re Expulsion of William S. by the Tri-County Area School Board, Decision and Order No. 132 (State Superintendent of Pub. Instr. June 21, 1985)

In re Expulsion of Keith K. by the Iola-Scandinavia Public Schools, Decision and Order No. 133 (State Superintendent of Pub. Instr. Feb. 10, 1986)

In re Expulsion of Mike M. by the Iola-Scandinavia Public Schools, Decision and Order No. 134 (State Superintendent of Pub. Instr. Feb. 10, 1986)

In re Expulsion of Glenn P. by the School Dist. of Wauwatosa, Decision and Order No. 135 (State Superintendent of Pub. Instr. Feb. 24, 1986)

In re Expulsion of Leslie F. by the Milwaukee Public Schools, Decision and Order No. 136 (State Superintendent of Pub. Instr. March 3, 1986)

In re Expulsion of Dale C. by the Central Westosha School Dist., Decision and Order No. 137 (State Superintendent of Pub. Instr. May 15, 1986)

In re Expulsion of Robert D., Jr. by the School Dist. of Crandon, Decision and Order No. 138 (State Superintendent of Pub. Instr. May 21, 1986)

In re Expulsion of Nancy Z. by the Janesville School Dist., Decision and Order No. 139 (State Superintendent of Pub. Instr. May 23, 1986)

In re Expulsion of Justin Bryan P. by the Cedarburg School Dist., Decision and Order No. 140 (State Superintendent of Pub. Instr. May 23, 1986)

In re Expulsion of Travis V. by the Waterloo School Dist., Decision and Order No. 141 (State Superintendent of Pub. Instr. May 23, 1986)

In re Expulsion of Eric K. by the Rosholt School Dist., Decision and Order No. 142 (State Superintendent of Pub. Instr. June 18, 1986)

In re Expulsion of Christopher F. by the Milwaukee Public Schools, Decision and Order No. 143 (State Superintendent of Pub. Instr. July 2, 1986)

In re Expulsion of Travis V. by the Waterloo School Dist., Decision and Order No. 144 (State Superintendent of Pub. Instr. July 2, 1986)

In re Expulsion of Ricardo S. by the School Dist. of Wisconsin Rapids, Decision and Order No. 145 (State Superintendent of Pub. Instr. Sept. 5, 1986)

In re Expulsion of Adam F. by the Kenosha Unified School Dist., Decision and Order No. 146 (State Superintendent of Pub. Instr. Oct. 24, 1986)

In re Expulsion of Lavell A. by the Kenosha Unified School Dist., Decision and Order No. 147 (State Superintendent of Pub. Instr. Jan. 12, 1987)

In re Expulsion of Lon Greg S. by the Port Washington-Saukville School Dist., Decision and Order No. 148 (State Superintendent of Pub. Instr. Feb. 10, 1987)

In re Expulsion of Robert M. by the Kiel School Dist., Decision and Order No. 149 (State Superintendent of Pub. Instr. April 30, 1987)

In re Expulsion of Michael G. by the Campbellsport School Dist., Decision and Order No. 150 (State Superintendent of Pub. Instr.)

In re Expulsion of Michael J. B. by the Palmyra-Eagle Area School Dist., Decision and Order No. 151 (State Superintendent of Pub. Instr. July 27, 1987)

In re Expulsion of Jay S. by the Plymouth School Dist., Decision and Order No. 152 (State Superintendent of Pub. Instr. Aug. 4, 1987)

In re Expulsion of Anthony Clark K. by the Amery School Dist., Decision and Order No. 153 (State Superintendent of Pub. Instr. August 19, 1987)

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In re Expulsion of Anthony Clark K. by the Amery School Dist., Decision and Order No. 155 (State Superintendent of Pub. Instr. Sept. 2, 1987)

In re Expulsion of Raymond M. by the Siren School Dist., Decision and Order No. 156 (State Superintendent of Pub. Instr. April 19, 1988)

In re Expulsion of Susan Marie H. by the Kenosha Unified School Dist., Decision and Order No. 157 (State Superintendent of Pub. Instr. June 18, 1988)

In re Expulsion of Brian C. by the Sheboygan Area School Dist., Decision and Order No. 158 (State Superintendent of Pub. Instr. Sept. 9, 1988)

In re Expulsion of Roy H. by the Blair School Dist., Decision and Order No. 159 (State Superintendent of Pub. Instr. Sept. 26, 1988)

In re Expulsion of Brandon G. by the West DePere School Dist., Decision and Order No. 160 (State Superintendent of Pub. Instr. April 27, 1989)

In re Expulsion of Michaelene J. by the Washington Island School Dist., Decision and Order No. 161 (State Superintendent of Pub. Instr. May 17, 1989)

In re Expulsion of Douglas S. by the Neenah School Dist., Decision and Order No. 162 (State Superintendent of Pub. Instr. May 23, 1989)

In re Expulsion of Nathan N. by the Hudson School Dist., Decision and Order No. 163 (State Superintendent of Pub. Instr. June 5, 1989)

In re Expulsion of Shakena V. by the Kenosha Unified School Dist., Decision and Order No. 164 (State Superintendent of Pub. Instr. June 16, 1989)

In re Expulsion of Michaelene J. by the Washington Island School Dist., Decision and Order No. 165 (State Superintendent of Pub. Instr. August 1, 1989)

In re Expulsion of Christopher K. by the West Allis School Dist., Decision and Order No. 166 (State Superintendent of Pub. Instr. April 18, 1990)

In re Expulsion of Patrick P. by the Mauston School Dist., Decision and Order No. 167 (State Superintendent of Pub. Instr. April 26, 1990)

In re Expulsion of Chad K. by the Wittenberg-Birnamwood School Dist., Decision and Order No. 168 (State Superintendent of Pub. Instr. May 7, 1990)

In re Expulsion of Lori P. by the Cudahy School Dist., Decision and Order No. 169 (State Superintendent of Pub. Instr. May 21, 1990)

In re Expulsion of Joshua S. by the D.C. Everest School Dist., Decision and Order No. 170 (State Superintendent of Pub. Instr. June 22, 1990)

In re Expulsion of Paul K. by the Flambeau School Dist., Decision and Order No. 171 (State Superintendent of Pub. Instr. July 17, 1990)

In re Expulsion of Michael P. by the Kenosha Unified School Dist., Decision and Order No. 172 (State Superintendent of Pub. Instr. October 8, 1990)

In re Expulsion of Joshua S. by the D. C. Everest School Dist., Decision and Order No. 173 (State Superintendent of Pub. Instr. October 26, 1990)

In re Expulsion of David F. by the Central Westosha School Dist., Decision and Order No. 174 (State Superintendent of Pub. Instr. November 27, 1990)

In re Expulsion of Russell B. by the Muskego-Norway School Dist., Decision and Order No. 175 (State Superintendent of Pub. Instr. February 28, 1991).

In re Expulsion of Antonio M. by the Kenosha Unified School Dist., Decision and Order No. 176 (State Superintendent of Pub. Instr. April 18, 1991)

In re Expulsion of Jennifer L. by the Siren School Dist., Decision and Order No. 177 (State Superintendent of Pub. Instr. May 14, 1991)

In re Expulsion of John K. by the Wisconsin Rapids School Dist., Decision and Order No. 178 (State Superintendent of Pub. Instr. May 17, 1991)

In re Expulsion of Jason M. by the Germantown School Dist., Decision and Order No. 179 (State Superintendent of Pub. Instr. June 27, 1991)

In re Expulsion of Jason R. by the Kenosha Unified School Dist., Decision and Order No. 180 (State Superintendent of Pub. Instr. August 2, 1991)

In re Expulsion of Kevin M. by the Oak Creek-Franklin School Dist., Decision and Order No. 181 (State Superintendent of Pub. Instr. September 13, 1991)

In re Expulsion of Patrick Lee Y. by the Kenosha Unified School Dist., Decision and Order No. 182 (State Superintendent of Pub. Instr. October 9, 1991)

In re Expulsion of Jerrett N. by the Baraboo School Dist., Decision and Order No. 183 (State Superintendent of Pub. Instr. December 23, 1991)

In re Expulsion of Nicole P. by the Crandon School Dist., Decision and Order No. 184 (State Superintendent of Pub. Instr. February 7, 1992)

In re Expulsion of Kristin J. P. by the Mukwonago Area School Dist., Decision and Order No. 185 (State Superintendent of Pub. Instr. February 21, 1992)

In re Expulsion of Taiwan O. W. by the Kenosha Unified School Dist., Decision and Order No. 186 (State Superintendent of Pub. Instr. April 7, 1992)

In re Expulsion of Isaac S. II by the Milwaukee School Dist., Decision and Order No. 187 (State Superintendent of Pub. Instr. April 21, 1992)

In re Expulsion of Rhiannon V. by the Muskego-Norway School Dist., Decision and Order No. 188 (State Superintendent of Pub. Instr. April 21, 1992)

In re Expulsion of Jesse F. by the Stanley-Boyd School Dist., Decision and Order No. 189 (State Superintendent of Pub. Instr. April 21, 1992)

In re Expulsion of Shane M. B. by the Green Bay Area Public School Dist., Decision and Order No. 190 (State Superintendent of Pub. Instr. April 21, 1992)

In re Expulsion of Joseph F. by the Almond-Bancroft School Dist., Decision and Order No. 191 (State Superintendent of Pub. Instr. May 13, 1992)

In re Expulsion of Christopher P. by the Shorewood School Dist., Decision and Order No. 192 (State Superintendent of Pub. Instr. May 18, 1992)

In re Expulsion of Nicole P. by the Crandon School Dist., Decision and Order No. 193 (State Superintendent of Pub. Instr. May 29, 1992)

In re Expulsion of Demetris S. by the Milwaukee School Dist., Decision and Order No. 194 (State Superintendent of Pub. Instr. June 8, 1992)

In re Expulsion of Brian V. by the Shorewood School Dist., Decision and Order No. 195 (State Superintendent of Pub. Instr. June 8, 1992)

In re Expulsion of Shawn H. by the Central/Westosha High School Dist., Decision and Order No. 196 (State Superintendent of Pub. Instr. July 1, 1992)

In re Expulsion of Bradley Scott P. by the Menasha Joint School Dist., Decision and Order No. 197 (State Superintendent of Pub. Instr. August 21, 1992)

In re Expulsion of Malayna H. by the Wauwatosa School Dist., Decision and Order No. 198 (State Superintendent of Pub. Instr. November 23, 1992)

In re Expulsion of Freddie B. by the Franklin School Dist., Decision and Order No. 199 (State Superintendent of Pub. Instr. December 14, 1992)

In re Expulsion of Ernesto G. by the Waukesha School Dist., Decision and Order No. 200 (State Superintendent of Pub. Instr. December 14, 1992)

In re Expulsion of Bradley P. by the South Milwaukee School Dist., Decision and Order No. 201 (State Superintendent of Pub. Instr. January 14, 1993)

In re Expulsion of Dustin L. M. by the Cedarburg School Dist., Decision and Order No. 202 (State Superintendent of Pub. Instr. February 9, 1993)

In re Expulsion of Chad B. by the Janesville School Dist., Decision and Order No. 203 (State Superintendent of Pub. Instr. April 1, 1993)

In re Expulsion of Randy H. by the Central/Westosha UHS School Dist., Decision and Order No. 204 (State Superintendent of Pub. Instr. April 6, 1993)

In re Expulsion of Jason S. by the Kenosha Unified School Dist., Decision and Order No. 205 (State Superintendent of Pub. Instr. April 19, 1993)

In re Expulsion of Brandon H. D. by the De Soto Area School Dist., Decision and Order No. 206 (Deputy State Superintendent of Pub. Instr. May 3, 1993)

In re Expulsion of Lenny R. G. by the Madison Metro School Dist., Decision and Order No. 207 (Deputy State Superintendent of Pub. Instr. May 17, 1993)

In re Expulsion of Akida B. by the Board of School Directors of the City of Milwaukee, Decision and Order No. 208 (State Superintendent of Pub. Instr. July 8, 1993)

In re Expulsion of David A. by the Kenosha Unified School Dist., Decision and Order No. 209 (State Superintendent of Pub. Instr. August 2, 1993)

In re Expulsion of Eric P. by the Tomah Area School Dist., Decision and Order No. 210 (State Superintendent of Pub. Instr. August 12, 1993)

In re Expulsion of Danielle S. by the Kenosha Area School Dist., Decision and Order No. 211 (State Superintendent of Pub. Instr. November 2, 1993)

In re Expulsion of Michael B. by the Oconomowoc Area School Dist., Decision and Order No. 212 (State Superintendent of Pub. Instr. December 3, 1993)

In re Expulsion of Marc G. by the Maple School Dist., Decision and Order No. 213 (State Superintendent of Pub. Instr. December 20, 1993)

In re Expulsion of Benjamin D. by the Maple School Dist., Decision and Order No. 214 (State Superintendent of Pub. Instr. December 28, 1993)

In re Expulsion of John P. by the West Allis-West Milwaukee School Dist., Decision and Order No. 215 (State Superintendent of Pub. Instr. January 14, 1994)

In re Expulsion of Joshua K. by the Clinton Community School Dist., Decision and Order No. 216 (State Superintendent of Pub. Instr. January 31, 1994)

In re Expulsion of Ramiro L. by the Westfield School Dist., Decision and Order No. 217 (State Superintendent of Pub. Instr. January 31, 1994)

In re Expulsion of Jared L. by the Menomonee Falls School Dist., Decision and Order No. 218 (State Superintendent of Pub. Instr. February 10, 1994)

In re Expulsion of Michael C. G. by the Hudson School Dist., Decision and Order No. 219 (State Superintendent of Pub. Instr. February 11, 1994)

In re Expulsion of Barry L. W. by the Kenosha Unified School Dist., Decision and Order No. 220 (State Superintendent of Pub. Instr. March 7, 1994)

In re Expulsion of Brad S. by the Germantown School Dist., Decision and Order No. 221 (State Superintendent of Pub. Instr. March 7, 1994)

In re Expulsion of Michael Ryan H. by the Clinton Community School Dist., Decision and Order No. 222 (State Superintendent of Pub. Instr. March 10, 1994)

In re Expulsion of Katie Nichole W. by the Kenosha Unified School Dist., Decision and Order No. 223 (State Superintendent of Pub. Instr. March 10, 1994)

In re Expulsion of Miranda V. by the Howard-Suamico School Dist., Decision and Order No. 224 (State Superintendent of Pub. Instr. March 22, 1994)

In re Expulsion of Hope B. by the Randolph School Dist., Decision and Order No. 225 (State Superintendent of Pub. Instr. April 12, 1994)

In re Expulsion of Jennifer P. by the Waukesha School Dist., Decision and Order No. 226 (State Superintendent of Pub. Instr. April 18, 1994)

In re Expulsion of Lori L. by the Baraboo School Dist., Decision and Order No. 227 (State Superintendent of Pub. Instr. April 22, 1994)

In re Expulsion of Douglas G. by the New London School Dist., Decision and Order No. 228 (State Superintendent of Pub. Instr. April 29, 1994)

In re Expulsion of Jack P. by the Crandon School Dist., Decision and Order No. 229 (State Superintendent of Pub. Instr. May 3, 1994)

In re Expulsion of Robert J. K. by the Manitowoc Public School Dist., Decision and Order No. 230 (State Superintendent of Pub. Instr. May 3, 1994)

In re Expulsion of Shawn F. by the Slinger School Dist., Decision and Order No. 231 (State Superintendent of Pub. Instr. June 9, 1994)

In re Expulsion of Paul O. by the Florence County School Dist., Decision and Order No. 232 (State Superintendent of Pub. Instr. June 28, 1994)

In re Expulsion of Brad M. V. by the Boyceville Community School Dist., Decision and Order No. 233 (State Superintendent of Pub. Instr. June 29, 1994)

In re Expulsion of Mark P. by the Slinger Middle School Dist., Decision and Order No. 234 (State Superintendent of Pub. Instr. August 1, 1994)

In re Expulsion of Zak by the Antigo School Dist., Decision and Order No. 235 (State Superintendent of Pub. Instr. August 11, 1994)

In re Expulsion of Mark by the Marinette School Dist., Decision and Order No. 236 (State Superintendent of Pub. Instr. August 26, 1994)

In re Expulsion of Dusty S. by the Mukwonago School Dist., Decision and Order No. 237 (State Superintendent of Pub. Instr. August 26, 1994)

In re Expulsion of Nikkole K. by the Janesville School Dist., Decision and Order No. 238 (State Superintendent of Pub. Instr. September 16, 1994)

In re Expulsion of Michael L. by the Waukesha School Dist., Decision and Order No. 239 (State Superintendent of Pub. Instr. September 20, 1994)

In re Expulsion of Bradley F. by the Tri-County Area School Dist., Decision and Order No. 240 (State Superintendent of Pub. Instr. November 30, 1994)

In re Expulsion of Travis M. by the Tri-County Area School Dist., Decision and Order No. 241 (State Superintendent of Pub. Instr. December 8, 1994)

In re Expulsion of Carlos M. by the West Allis-West Milwaukee School Dist., Decision and Order No. 242 (State Superintendent of Pub. Instr. December 21, 1994)

In re Expulsion of Jeffrey S. by the Riverdale School Dist., Decision and Order No. 243 (State Superintendent of Pub. Instr. January 9, 1995)

In re Expulsion of Tracy M. by the Random Lake School Dist., Decision and Order No. 244 (State Superintendent of Pub. Instr. January 11, 1995)

In re Expulsion of Cheryl T. by the Winter School Dist., Decision and Order No. 245 (State Superintendent of Pub. Instr. March 6, 1995)

In re Expulsion of Brad O. by the Madison Metropolitan School Dist., Decision and Order No. 246 (State Superintendent of Pub. Instr. March 16, 1995)

In re Expulsion of Christopher W. by the Tomah Area School Dist., Decision and Order No. 247 (State Superintendent of Pub. Instr. April 21, 1995)

In re Expulsion of Rebecca S. by the Janesville School Dist., Decision and Order No. 248 (State Superintendent of Pub. Instr. May 8, 1995)

In re Expulsion of Dwayne O. by the Milwaukee Public School Dist., Decision and Order No. 249 (State Superintendent of Pub. Instr. May 8, 1995)

In re Expulsion of Ernestina G. by the Wautoma Area School Dist., Decision and Order No. 250 (State Superintendent of Pub. Instr. June 1, 1995)

In re Expulsion of Brandon C. by the Florence County School Dist., Decision and Order No. 251 (State Superintendent of Pub. Instr. June 12, 1995)

In re Expulsion of Suparin C. by the Janesville School Dist., Decision and Order No. 252 (State Superintendent of Pub. Instr. June 12, 1995)

In re Expulsion of Robin L. by the East Troy Community School Dist., Decision and Order No. 253 (State Superintendent of Pub. Instr. June 21, 1995)

In re Expulsion of Paul R. by the East Troy Community School Dist., Decision and Order No. 254 (State Superintendent of Pub. Instr. June 21, 1995)

In re Expulsion of William J. M. by the Elkhorn Area School Dist., Decision and Order No. 255 (State Superintendent of Pub. Instr. July 12, 1995)

In re Expulsion of Stevin W. B. by the Baraboo School Dist., Decision and Order No. 256 (State Superintendent of Pub. Instr. July 20, 1995)

In re Expulsion of Amanda L. by the Hartford UHS School Dist., Decision and Order No. 257 (State Superintendent of Pub. Instr. August 3, 1995)

In re Expulsion of Omar C. by the Whitewater School Dist., Decision and Order No. 258 (State Superintendent of Pub. Instr. August 7, 1995)

In re Expulsion of Tony R. by the Lake Geneva J1 School Dist., Decision and Order No. 259 (State Superintendent of Pub. Instr. August 11, 1995)

In re Expulsion of Alena H. by the Marinette School Dist., Decision and Order No. 260 (State Superintendent of Pub. Instr. September 1, 1995)

In re Expulsion of Aaron B. by the Westfield School Dist., Decision and Order No. 261 (State Superintendent of Pub. Instr. September 15, 1995)

In re Expulsion of Paul R. by the East Troy Community School Dist., Decision and Order No. 262 (State Superintendent of Pub. Instr. October 9, 1995)

In re Expulsion of Justin M. by the Fort Atkinson School Dist., Decision and Order No. 263 (State Superintendent of Pub. Instr. December 5, 1995)

In re Expulsion of Jennifer C. by the Winter School Dist., Decision and Order No. 264 (State Superintendent of Pub. Instr. December 6, 1995)

In re Expulsion of Elena C. by the Janesville School Dist., Decision and Order No. 265 (State Superintendent of Pub. Instr. December 12, 1995)

In re Expulsion of Jesse M. K. by the Tri-County Area School Dist., Decision and Order No. 266 (State Superintendent of Pub. Instr. January 2, 1996)

In re Expulsion of Clifton V. by the Eau Claire Area School Dist., Decision and Order No. 267 (State Superintendent of Pub. Instr. January 5, 1996)

In re Expulsion of Kimberly K. by the Oak Creek-Franklin School Dist., Decision and Order No. 268 (State Superintendent of Pub. Instr. January 8, 1996)

In re Expulsion of Ernesto J. G. by the Waukesha School Dist., Decision and Order No. 269 (State Superintendent of Pub. Instr. January 12, 1996)

In re Expulsion of Christopher D. by the Hartland/Lakeside Joint No. 3 School Dist., Decision and Order No. 270 (State Superintendent of Pub. Instr. January 18, 1996)

In re Expulsion of Jared L. by the Northland Pines School Dist., Decision and Order No. 271 (State Superintendent of Pub. Instr. January 19, 1996)

In re Expulsion of Jason Q. by the Hartford Union High School Dist., Decision and Order No. 272 (State Superintendent of Pub. Instr. February 9, 1996)

In re Expulsion of Chad S. by the Hartford Union High School Dist., Decision and Order No. 273 (State Superintendent of Pub. Instr. February 9, 1996)

In re Expulsion of Matthew C. M. by the Cedarburg School Dist., Decision and Order No. 274 (State Superintendent of Pub. Instr. February 14, 1996)

In re Expulsion of Kathryn F. by the Hartford Union High School Dist., Decision and Order No. 275 (State Superintendent of Pub. Instr. March 5, 1996)

In re Expulsion of Matthew K. by the Hartford Union High School Dist., Decision and Order No. 276 (State Superintendent of Pub. Instr. March 11, 1996)

In re Expulsion of Matthew C. by the Lake Geneva-Genoa City School Dist., Decision and Order No. 277 (State Superintendent of Pub. Instr. March 12, 1996)

In re Expulsion of Courtney R. by the Germantown School Dist., Decision and Order No. 278 (State Superintendent of Pub. Instr. March 21, 1996)

In re Expulsion of Raymond A. H. by the Menomonie Indian School Dist., Decision and Order No. 279 (State Superintendent of Pub. Instr. March 22, 1996)

In re Expulsion of Raymond C. by the Wausaukee School Dist., Decision and Order No. 280 (State Superintendent of Pub. Instr. March 22, 1996)

In re Expulsion of Jesse B. by the Winter School Dist., Decision and Order No. 281 (State Superintendent of Pub. Instr. March 25, 1996)

In re Expulsion of Leroy H. by the Kewaunee School Dist., Decision and Order No. 282 (State Superintendent of Pub. Instr. March 27, 1996)

In re Expulsion of Jared L. by the Northland Pines School Dist., Decision and Order No. 283 (State Superintendent of Pub. Instr. March 29, 1996)

In re Expulsion of Michael R. B. by the Menomonie Area School Dist., Decision and Order No. 284 (State Superintendent of Pub. Instr. April 9, 1996)

In re Expulsion of Sarah C. by the Oak Creek-Franklin School Dist., Decision and Order No. 285 (State Superintendent of Pub. Instr. April 16, 1996)

In re Expulsion of Rebekah T. by the Racine Unified School Dist., Decision and Order No. 286 (State Superintendent of Pub. Instr. April 18, 1996)

In re Expulsion of Brent W. by the D.C. Everest Area School Dist., Decision and Order No. 287 (State Superintendent of Pub. Instr. April 25, 1996)

In re Expulsion of Tyrell D. by the Racine Unified School Dist., Decision and Order No. 288 (State Superintendent of Pub. Instr. May 14, 1996)

In re Expulsion of Thomas P. by the Necedah Area School Dist., Decision and Order No. 289 (State Superintendent of Pub. Instr. May 23, 1996)

In re Expulsion of Brent S. by the Mondovi School Dist., Decision and Order No. 290 (State Superintendent of Pub. Instr. May 23, 1996)

In re Expulsion of Justin L. by the Wisconsin Dells School Dist., Decision and Order No. 291 (State Superintendent of Pub. Instr. May 23, 1996)

In re Expulsion of Joseph M. by the Unity School Dist., Decision and Order No. 292 (State Superintendent of Pub. Instr. May 24, 1996)

In re Expulsion of Jesse P. by the Hustisford School Dist., Decision and Order No. 293 (State Superintendent of Pub. Instr. June 10, 1996)

In re Expulsion of Jason M. by the West Allis-West Milwaukee School Dist., Decision and Order No. 294 (State Superintendent of Pub. Instr. June 24, 1996)

In re Expulsion of Raymond G. by the Tri-County Area School Dist., Decision and Order No. 295 (State Superintendent of Pub. Instr. June 25, 1996)

In re Expulsion of Nathan W. by the Wilmot Union High School Dist., Decision and Order No.: 296 (State Superintendent of Pub. Instr. July 10, 1996)

In re Expulsion of Joshua J. by the Menasha Joint School Dist., Decision and Order No. 297 (State Superintendent of Pub. Instr. July 8, 1996)

In re Expulsion of Michael H. by the Janesville School Dist., Decision and Order No. 298 (State Superintendent of Pub. Instr. July 23, 1996)

In re Expulsion of Donald P. by the Westby Area School Dist., Decision and Order No. 299 (State Superintendent of Pub. Instr. August 9, 1996)

In re Expulsion of Adam S. by the East Troy Community School Dist., Decision and Order No. 300 (State Superintendent of Pub. Instr. August 9, 1996)

In re Expulsion of Nicole R. by the Granton Area School Dist., Decision and Order No. 301 (State Superintendent of Pub. Instr. September. 19, 1996)

In re Expulsion of Dustin P. by the Deerfield Community School Dist., Decision and Order No. 302 (State Superintendent of Pub. Instr. October 11, 1996)

In re Expulsion of Nicholas E. by the Lodi School Dist., Decision and Order No. 303 (State Superintendent of Pub. Instr. Oct. 17, 1996)

In re Expulsion of Adam S. by the East Troy Community School Dist., Decision and Order No. 304 (State Superintendent of Pub. Instr. November 25, 1996)

In re Expulsion of Nicholas K. by the Hudson School Dist., Decision and Order No. 305 (State Superintendent of Pub. Instr. December 5, 1996)

In re Expulsion of Kenneth J. by the Sheboygan Area School Dist., Decision and Order No. 306 (State Superintendent of Pub. Instr. December 9, 1996)

In re Expulsion of Joshua S. by the Beloit-Turner School Dist., Decision and Order No. 307 (State Superintendent of Pub. Instr. January 14, 1997)

In re Expulsion of Heather K. by the D.C. Everest Area School Dist., Decision and Order No. 308 (State Superintendent of Pub. Instr. January 15, 1997)

In re Expulsion of Troy Y. by the Burlington Area School Dist., Decision and Order No. 309 (State Superintendent of Pub. Instr. January 21, 1997)

In re Expulsion of Danielle A. W. by the Barron Area School Dist., Decision and Order No. 310 (State Superintendent of Pub. Instr. January 31, 1997)

In re Expulsion of Steven S. by the Merrill Area School Dist., Decision and Order No. 311 (State Superintendent of Pub. Instr. February 7, 1997)

In re Expulsion of Brad K. by the Burlington School Dist., Decision and Order No. 312 (State Superintendent of Pub. Instr. February 14, 1997)

In re Expulsion of Tammy D. by the Greenfield School Dist., Decision and Order No. 313 (State Superintendent of Pub. Instr. March 11, 1997)

In re Expulsion of Jason J. K. by the Franklin School Dist., Decision and Order No. 314 (State Superintendent of Pub. Instr. March 21, 1997)

In re Expulsion of Timothy W. by the Greenfield School Dist., Decision and Order No. 315 (State Superintendent of Pub. Instr. March 21, 1997)

In re Expulsion of William B. by the Hilbert School Dist., Decision and Order No. 316 (State Superintendent of Pub. Instr. March 26, 1997)

In re Expulsion of Niles T. S. by the Webster School Dist., Decision and Order No. 317 (State Superintendent of Pub. Instr. April 3, 1997)

In re Expulsion of Timothy R. by the DePere Unified School Dist., Decision and Order No. 318 (State Superintendent of Pub. Instr. April 3, 1997)

In re Expulsion of Jeffrey L. by the New Lisbon School Dist., Decision and Order No. 319 (State Superintendent of Pub. Instr. Apr. 8, 1997)

In re Expulsion of Clarence S. by the Bonduel School Dist., Decision and Order No. 320 (State Superintendent of Pub. Instr. April 10, 1997)

In re Expulsion of Bryan O. by the Milwaukee Public School Dist., Decision and Order No. 321 (State Superintendent of Pub. Instr. Apr. 14, 1997)

In re Expulsion of Jason Y. by the Janesville School Dist., Decision and Order No. 322 (State Superintendent of Pub. Instr. April 25, 1997)

In re Expulsion of Jeremy B. by the Monona Grove School Dist., Decision and Order No. 323 (State Superintendent of Pub. Instr. April 25, 1997)

In re Expulsion of Daniel A. by the Mauston School Dist., Decision and Order No. 324 (State Superintendent of Pub. Instr. May 8, 1997)

In re Expulsion of Ryan G. by the Sparta Area School Dist., Decision and Order No. 325 (State Superintendent of Pub. Instr. May 19, 1997)

In re Expulsion of Michael L. by the New Richmond School Dist., Decision and Order No. 326 (State Superintendent of Pub. Instr. June 2, 1997)

In re Expulsion of Jason A. by the DeForest Area School Dist., Decision and Order No. 327 (State Superintendent of Pub. Instr. June 26, 1997)

In re Expulsion of Justin P. by the Cornell School Dist., Decision and Order No. 328 (State Superintendent of Pub. Instr. June 26, 1997)

In re Expulsion of Justin E. by the Antigo Unified School Dist., Decision and Order No. 329 (State Superintendent of Pub. Instr. July 24, 1997)

In re Expulsion of Joshua R. by the Edgerton School Dist., Decision and Order No. 330 (State Superintendent of Pub. Instr. July 29, 1997)

In re Expulsion of John Michael N. by the Random Lake School Dist., Decision and Order No. 331 (State Superintendent of Pub. Instr. Aug. 5, 1997)

In re Expulsion Of Justin O. by the Monona Grove School Dist., Decision and Order No. 332 (State Superintendent of Pub. Instr. Sept. 4, 1997)

In re Expulsion of Michael D. by the Mauston School Dist., Decision and Order No. 333 (State Superintendent of Pub. Instr. Sept. 10, 1997)

In re Expulsion of Del C. by the Stevens Point School Dist., Decision and Order No. 334 (State Superintendent of Pub. Instr. Sept. 10, 1997)

In re Expulsion of Liana D. by the Milwaukee Public School Dist., Decision and Order No. 335 (State Superintendent of Pub. Instr. September 15, 1997)

In re Expulsion of Jennifer L. by the Milwaukee Public School Dist., Decision and Order No. 336 (State Superintendent of Pub. Instr. September 15, 1997)

In re Expulsion of Tara V. by the Edgerton School Dist., Decision and Order No. 337 (State Superintendent of Pub. Instr. September 22, 1997)

In re Expulsion of Alfred L. by the Oconto Falls School Dist., Decision and Order No. 338 (State Superintendent of Pub. Instr. September 24, 1997)

In re Expulsion of Justin E. by the Antigo Unified School Dist., Decision and Order No. 339 (State Superintendent of Pub. Instr. October 16, 1997)

In re Expulsion of Adam C. by the Evansville Community School Dist., Decision and Order No. 340 (State Superintendent of Pub. Instr. November 26, 1997)

In re Expulsion of Aron P. by the Sturgeon Bay School Dist., Decision and Order No. 341 (State Superintendent of Pub. Instr. December 17, 1997)

In re Expulsion of Nathan H. by the West Bend School Dist., Decision and Order No. 342 (State Superintendent of Pub. Instr. January 13, 1998)

In re Expulsion of Carol T. by the Central/Westosha School Dist., Decision and Order No. 343 (State Superintendent of Pub. Instr. January 13, 1998)

In re Expulsion of Chris S. by the Richland School Dist., Decision and Order No. 344 (State Superintendent of Pub. Instr. January 26, 1998)

In re Expulsion of Chadwynn N. by the Random Lake School Dist., Decision and Order No. 345 (State Superintendent of Pub. Instr. January 26, 1998)

In re Expulsion of Cassandra W. by the Mauston School Dist., Decision and Order No. 346 (State Superintendent of Pub. Instr. February 20, 1998)

In re Expulsion of Michael S. by the Kaukauna Area School Dist., Decision and Order No. 347 (State Superintendent of Pub. Instr. February 23, 1997)

In re Expulsion of Stephanie T. by the Milwaukee Public School Dist., Decision and Order No. 348 (State Superintendent of Pub. Instr. March 3, 1998)

In re Expulsion of Matt H. by the Tomorrow River School Dist., Decision and Order No. 349 (State Superintendent of Pub. Instr. March 23, 1998)

In re Expulsion of Nathaniel S. by the Wausau School Dist., Decision and Order No. 350 (State Superintendent of Pub. Instr. March 25, 1998)

In re Expulsion of Leo P. by the Whitewater Unified School Dist., Decision and Order No. 351 (State Superintendent of Pub. Instr. March 31, 1998)

In re Expulsion of James D. by the Greenfield School Dist., Decision and Order No. 352A (State Superintendent of Pub. Instr. April 1, 1998)

In re Expulsion of Robert M. by the Arcadia School Dist., Decision and Order No. 353 (State Superintendent of Pub. Instr. April 6, 1998)

In re Expulsion of Shannon T. by the Milwaukee Public School Dist., Decision and Order No. 354 (State Superintendent of Pub. Instr. April 16, 1998)

In re Expulsion of Charles E. by the Elkhart Lake-Glenbeulah School Dist., Decision and Order No. 355 ((State Superintendent of Pub. Instr. April 20, 1998)

In re Expulsion of Nicholas Z. by the Pittsville School Dist., Decision and Order No. 356 (State Superintendent of Pub. Instr. May 12, 1998)

In re Expulsion of Erin R. by the Hayward Community School District Board of Education, Decision and Order No. 357 (State Superintendent of Pub. Inst. May 12, 1998)

In re Expulsion of Jamie B. by the Barron School Dist., Decision and Order No. 358 (State Superintendent of Pub. Instr. May 14, 1998)

In re Expulsion of Joanna J. by the Milwaukee Public School Dist., Decision and Order No. 359 (State Superintendent of Pub. Instr. May 22, 1998)

In re Expulsion of Nathan W. by the Wilmot Union High School Dist., Decision and Order No. 360 (State Superintendent of Pub. Instr. May 27, 1998)

In re Expulsion of Justin S. by the Marshfield School Dist., Decision and Order No. 361 (State Superintendent of Pub. Instr. May 27, 1998)

In re Expulsion of Stacey R. by the Milwaukee Public School Dist., Decision and Order No. 362 (State Superintendent of Pub. Instr. June 1, 1998)

In re Expulsion of Dale B. by the Hortonville School Dist., Decision and Order No. 363 (State Superintendent of Pub. Instr. June 9, 1998)

In re Expulsion of Jason G. by the Greenfield School Dist., Decision and Order No. 364 (State Superintendent of Pub. Instr. June 12, 1998)

In re Expulsion of Fredell F. by the Milwaukee Public School Dist., Decision and Order No. 365 (State Superintendent of Pub. Instr. July 2, 1998)

In re Expulsion of Elliott G. by the Marshfield School Dist., Decision and Order No. 366 (State Superintendent of Pub. Instr. July 2, 1998)

In re Expulsion of Michael N. by the Wonewoc Union Center School Dist., Decision and Order No. 367 (State Superintendent of Pub. Instr. July 27, 1998)

In re Expulsion of Vadim S. by the Madison Metropolitan School Dist., Decision and Order No. 368 (State Superintendent of Pub. Instr. July 29, 1998)

In re Expulsion of Mysti P. by the Adams Friendship Area School Dist., Decision and Order No. 369 (State Superintendent of Pub. Instr. August 7, 1998)

In re Expulsion of Travis O. by the Lake-Geneva-Genoa City Union School Dist., Decision and Order No. 370 (State Superintendent of Pub. Instr. August 21, 1998)

In re Expulsion of Kevin M. by the Oak Creek-Franklin School Dist., Decision and Order No. 371 (State Superintendent of Pub. Instr. October 15, 1998)

In re Expulsion of Alexander P. by the Oak Creek-Franklin School Dist., Decision and Order No. 372 (State Superintendent of Pub. Instr. November 23, 1998)

In re Expulsion of Nick N. by the Elcho School Dist., Decision and Order No. 373 (State Superintendent of Pub. Instr. December 4, 1998)

In re Expulsion of Stephanie O. by the Waupaca School Dist., Decision and Order No. 374 (State Superintendent of Pub. Instr. December 15, 1998)

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In re Expulsion of Matt L. by the Merrill Area Public School Dist., Decision and Order No. 381 (State Superintendent of Pub. Instr. May 19, 1999)

In re Expulsion of Jeremy S. by the Hayward Community School Dist., Decision and Order No. 382 (State Superintendent of Pub. Instr. May 20, 1999)

In re Expulsion of Matthew R. by the Burlington Area School Dist., Decision and Order No. 383 (State Superintendent of Pub. Instr. May 27, 1999)

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In re Expulsion of Jesse M. by the Tri County Area School District. Decision and Order No. 385 (State Superintendent of Pub. Instr. June 11, 1999)

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In re Expulsion of Teal P. by the Ashland School District. Decision and Order No. 387 (State Superintendent of Pub. Instr. June 14, 1999)

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In re Expulsion of Willie C. by the Racine Unified School District. Decision and Order No. 389 (State Superintendent of Pub. Instr. June 16, 1999)

In re Expulsion of Nicole G. by the Ashland School District. Decision and Order No. 390 (State Superintendent of Pub. Instr. July 1, 1999)

In re Expulsion of Nathan by the Delavan-Darien School District. Decision and Order No. 391 (State Superintendent of Pub. Instr. July 23, 1999)

In re Expulsion of Tommie L. by the Brown Deer School District. Decision and Order No. 392 (State Superintendent of Pub. Instr. July 29, 1999)

In re Expulsion of Muranda P. by the Winneconne Community School District. Decision and Order No. 393 (State Superintendent of Pub. Instr. August 2, 1999)

In re Expulsion of Zachary G. by the East Troy Community School District. Decision and Order No. 394 (State Superintendent of Pub. Instr. August 11, 1999)

In re Expulsion of Jeremy B. by the Waukesha School District. Decision and Order No. 395 (State Superintendent of Pub. Instr. August 16, 1999)

In re Expulsion of James R. by the West Bend School District. Decision and Order No. 396 (State Superintendent of Pub. Instr. August 17, 1999)

In re Expulsion of Damis M. by the Cadott School District. Decision and Order No. 397 (State Superintendent of Pub. Instr. August 20, 1999)

In re Expulsion of Dustin P. by the Flambeau School District. Decision and Order No. 398 (State Superintendent of Pub. Instr. August 20, 1999)

In re Expulsion of Derek R. by the Holmen School District, Decision and Order No. 399 (State Superintendent of Pub. Instr. August 20, 1999)

In re Expulsion of Amanda H. by the Prairie du Chien School District, Decision and Order No. 400 (State Superintendent of Pub. Instr. August 25, 1999)

In re Expulsion of Kevin R. by the Beaver Dam Unified School District, Decision and Order No. 401 (State Superintendent of Pub. Instr. September 13, 1999)

In re Expulsion of Travis S. by the Spencer Public Schools School District, Decision and Order No. 402 (State Superintendent of Pub. Instr. September 13, 1999)

In re Expulsion of Joseph S. by the Oak Creek-Franklin Joint School District, Decision and Order No. 403 (State Superintendent of Pub. Instr. October 1, 1999)

In re Expulsion of Jacob by the Greenfield School District, Decision and Order No. 404 (State Superintendent of Pub. Instr. January 3, 2000)

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In re the Expulsion of John by the Whitehall School District, Decision and Order No. 406 (State Superintendent of Pub. Instr. February 15, 2000)

In re the Expulsion of Will F. by the Lake Holcombe School District, Decision and Order No. 407 (State Superintendent of Pub. Instr. February 21, 2000)

In re the Expulsion of Telsea M. by the East Troy Community School District, Decision and Order No. 408 (State Superintendent of Pub. Instr. February 24, 2000)

In re Expulsion of Jessica G. by the Chippewa Falls Area Unified School District, Decision and Order No. 409 (State Superintendent of Pub. Instr. March 15, 2000)

In re the Expulsion of Laura S. by the Viroqua Area School District, Decision and Order No. 410 (State Superintendent of Pub. Instr. March 31, 2000)

In re the Expulsion of Michael M. by the Appleton Area School District, Decision and Order No. 411 (State Superintendent of Pub. Instr. April 25, 2000)

In re the Expulsion of Julia M. by the Hamilton School District, Decision and Order No. 412 (State Superintendent of Pub. Instr. April 11, 2000)

In re the Expulsion of Kyle J. W. by the Viroqua Area School District, Decision and Order No. 413 (State Superintendent of Pub. Instr. April 27, 2000)

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In re the Expulsion of Ryan S. by the Barron Area School District, Decision and Order No. 417 (State Superintendent of Pub. Instr. June 9, 2000)

In re the Expulsion of John L. by the Greenfield School District, Decision and Order No. 418 (State Superintendent of Pub. Instr. June 26, 2000)

In re the Expulsion of Jamie L. W. by the Hudson School District, Decision and Order No. 419 (State Superintendent of Pub. Instr. June 15, 2000)

In re the Expulsion of Matthew F. by the East Troy Community School District, Decision and Order No. 420 (State Superintendent of Pub. Instr. June 26, 2000)

In re the Expulsion of Jared K. by the West Allis School District, Decision and Order No. 421 (State Superintendent of Pub. Instr. June 30, 2000)

In re the Expulsion of Rachel M. by the School District of Wabeno Area, Decision and Order No. 422 (State Superintendent of Pub. Instr. August 4, 2000)

In re the Expulsion of Travis J. M. by the Deerfield Community School District, Decision and Order No. 423 (State Superintendent of Pub. Instr. September 25, 2000)

In re the Expulsion of Barrett S. by the Fox Point J2 School District, Decision and Order No. 424 (State Superintendent of Pub. Instr. October 6, 2000)

In re the Expulsion of Brian M. by the Lodi School District, Decision and Order No. 425 (State Superintendent of Pub. Instr. October 23, 2000)

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In re the Expulsion of Julius T. by the Milwaukee Public School District, Decision and Order No. 427 (State Superintendent of Pub. Instr. December 7, 2000)

In re the Expulsion of Michael S. by the South Milwaukee School District, Decision and Order No. 428 (State Superintendent of Pub. Instr. December 26, 2000)

In re the Expulsion of David D. by the Central High School District of Westosha, Decision and Order No. 429 (State Superintendent of Pub. Instr. January 25, 2001)

In re the Expulsion of Jessica H. by the School District of Janesville, Decision and Order No. 430 (State Superintendent of Pub. Instr. March 29, 2001)

In re the Expulsion of Athena S. by the School District of Omro, Decision and Order No. 431 (State Superintendent of Pub. Instr. April 17, 2001)

In re the Expulsion of Dustin L. F. by the Altoona School District, Decision and Order No. 432 (State Superintendent of Pub. Instr. April 11, 2001)

In re the Expulsion of Dona B. by the Superior School District, Decision and Order No. 433 (State Superintendent of Pub. Instr. May 9, 2001)

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In re the Expulsion of Raymond K. by the Phillips School District, Decision and Order No. 435 (State Superintendent of Pub. Instr. June 25, 2001)

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In re the Expulsion of Drew K. by Sparta School District, Decision and Order No. 443 (State Superintendent of Pub. Instr. September 17, 2001)

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In re the Expulsion of James S. by Waupun School District, Decision and Order No. 452 (State Superintendent of Pub. Instr. January 25, 2002)

In re the Expulsion of Alexander B. by Milwaukee School District, Decision and Order No. 453 (State Superintendent of Pub. Instr. February 1, 2002)

In re the Expulsion of Andrew T. by Waupaca School District, Decision and Order No. 454 (State Superintendent of Pub. Instr. February 8, 2002)

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In re the Expulsion of Kimberly S. by Milton School District, Decision and Order No. 457 (State Superintendent of Pub. Instr. March 6, 2002)

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In re the Expulsion of Kristen W. by Cedarburg School District, Decision and Order No. 460 (State Superintendent of Pub. Instr. March 18, 2002)

In re the Expulsion of Barry P. by Westfield School District, Decision and Order No. 461 (State Superintendent of Pub. Instr. March 26, 2002)

In re the Expulsion of Jamie P. by Central/Westosha Union High School District, Decision and Order No. 462 (State Superintendent of Pub. Instr. March 26, 2002)

In re the Expulsion of Joshua D. by South Milwaukee School District, Decision and Order No. 463 (State Superintendent of Pub. Instr. April 11, 2002)

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In re the Expulsion of Patrick P. by Merrill Area School District, Decision and Order No. 467 (State Superintendent of Pub. Instr. May 10, 2002)

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In re the Expulsion of David N. by Milton School District, Decision and Order No. 475 (State Superintendent of Pub. Instr. July 26, 2002)

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In re the Expulsion of Todd N. by Elmbrook School District, Decision and Order No. 477 (State Superintendent of Pub. Instr. August 22, 2002)

In re the Expulsion of Joseph S. by Oconomowoc Area School District, Decision and Order No. 478 (State Superintendent of Pub. Instr. September 4, 2002)

In re the Expulsion of Melissa R. by Westfield School District, Decision and Order No. 479 (State Superintendent of Pub. Instr. September 10, 2002)

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In re the Expulsion of Antone M. by Westfield School District, Decision and Order No. 481 (State Superintendent of Pub. Instr. December 16, 2002)

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In re the Expulsion of Luke D. by Durand School District, Decision and Order No. 483 (State Superintendent of Pub. Instr. February 14, 2003)

In re the Expulsion of Evan D. by Burlington Area School District, Decision and Order No. 484 (State Superintendent of Pub. Instr. February 18, 2003)

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In re the Expulsion of Steven B. by St. Croix Falls School District, Decision and Order No. 486 (State Superintendent of Pub. Instr. February 27, 2003)

In re the Expulsion of Ryan M. by Antigo School District, Decision and Order No. 487 (State Superintendent of Pub. Instr. March 7, 2003)

In re the Expulsion of Bobby H. by Elmbrook School District, Decision and Order No. 488 (State Superintendent of Pub. Instr. March 21, 2003)

In re the Expulsion of Curtis O. by St. Croix Central School District, Decision and Order No. 489 (State Superintendent of Pub. Instr. April 17, 2003)

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In re the Expulsion of Jakeiya C. by Greenfield School District, Decision and Order No. 493 (State Superintendent of Pub. Instr. May 6, 2003)

In re the Expulsion of Justin B. by Central/Westosha High School District, Decision and Order No. 494 (State Superintendent of Pub. Instr. May 8, 2003)

In re the Expulsion of Joe K. by Hartford Union High School District, Decision and Order No. 495 (State Superintendent of Pub. Instr. May 8, 2003)

In re the Expulsion of James B. by Westfield School District, Decision and Order No. 496 (State Superintendent of Pub. Instr. June 10, 2003)

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In re the Expulsion of Tyler H. by Milton School District, Decision and Order No. 498 (State Superintendent of Pub. Instr. June 23, 2003)

In re the Expulsion of Michael A. W. by Oak Creek School District, Decision and Order No. 499 (State Superintendent of Pub. Instr. August 5, 2003)

In re the Expulsion of Zachary S. by Oconomowoc Area School District, Decision and Order No. 500 (State Superintendent of Pub. Instr. August 28, 2003)

In re the Expulsion of Richard G. by Superior School District, Decision and Order No. 501 (State Superintendent of Pub. Instr. September 16, 2003)

In re the Expulsion of Hannah W. by River Falls School District, Decision and Order No. 502 (State Superintendent of Pub. Instr. December 12, 2003)

In re the Expulsion of Daniel C. by Whitewater School District, Decision and Order No. 503 (State Superintendent of Pub. Instr. December 19, 2003)

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In re the Expulsion of Nicholas L. B. by Bayfield School District, Decision and Order No. 506 (State Superintendent of Pub. Instr. Feb. 3, 2004)

In re the Expulsion of Benjamin Z. by Marinette School District, Decision and Order No. 507 (State Superintendent of Pub. Instr. March 1, 2004)

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In re Expulsion of Tiffany S. by Edgerton School District, Decision and Order No. 517 (State Superintendent of Pub. Instr. June 21, 2004)

In re Expulsion of Alan W. by West Bend School District, Decision and Order No. 518 (State Superintendent of Pub. Instr. June 25, 2004)

In re Expulsion of Curtis B. by Marinette School District, Decision and Order No. 519 (State Superintendent of Pub. Instr. June 25, 2004)

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In re Expulsion of Jordan G. by Pardeeville Area School District, Decision and Order No. 521 (State Superintendent of Pub. Instr. July 26, 2004)

In re Expulsion of Aaron S. by Tri-County Area School District, Decision and Order No. 522 (State Superintendent of Pub. Instr. July 26, 2004)

In re Expulsion of Brittany B. by Westfield School District, Decision and Order No. 523a (State Superintendent of Pub. Instr. August 17, 2004)

In re Expulsion of David S. by Elk Mound Area School District, Decision and Order No. 524 (State Superintendent of Pub. Instr. August 26, 2004)

In re Expulsion of Joshua S. by Madison Metropolitan School District, Decision and Order No. 525 (State Superintendent of Pub. Instr. October 20, 2004)

In re Expulsion of Joseph S. by McFarland School District, Decision and Order No. 526 (State Superintendent of Pub. Instr. November 16, 2004)

In re Expulsion of Laura F. by West Allis School District, Decision and Order No. 527 (State Superintendent of Pub. Instr. December 20, 2004)

In re Expulsion of Nickenia S. by Milwaukee Public School District, Decision and Order No. 528 (State Superintendent of Pub. Instr. January 11, 2005)

In re Expulsion of Danielle C. by Cedarburg School District, Decision and Order No. 529 (State Superintendent of Pub. Instr. January 28, 2005)

In re Expulsion of Chelsea N. by Appleton Area School District, Decision and Order No. 530 (State Superintendent of Pub. Instr. January 28, 2005)

In re Expulsion of Kattie Mae P. by Lodi School District, Decision and Order No. 531 (State Superintendent of Pub. Instr. February 11, 2005)

In re Expulsion of Nathan H. by Drummond Area School District, Decision and Order No. 532 (State Superintendent of Pub. Instr. February 9, 2005)

In re Expulsion of Alex M. by Racine Unified School District, Decision and Order No. 533 (State Superintendent of Pub. Instr. February 15, 2005)

In re Expulsion of Perignon B. by Neenah Joint School District, Decision and Order No. 534 (State Superintendent of Pub. Instr. March 21, 2005)

In re Expulsion of Anthony B. by Ladysmith-Hawkins School District, Decision and Order No. 535 (State Superintendent of Pub. Instr. March 21, 2005)

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In re Expulsion of E. R., Jr. by Flambeau School District, Decision and Order No. 540 (State Superintendent of Pub. Instr. May 4, 2005)

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In re Expulsion of B. W. by Black River Falls School District, Decision and Order No. 542 (State Superintendent of Pub. Instr. May 26, 2005)

In re Expulsion of C. T. by Suring School District, Decision and Order No. 543 (State Superintendent of Pub. Instr. May 26, 2005)

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In re Expulsion of A. T. by Oregon School District, Decision and Order No. 545 (State Superintendent of Pub. Instr. May 27, 2005)

In re Expulsion of R. N. by Green Bay Area School District, Decision and Order No. 546 (State Superintendent of Pub. Instr. June 3, 2005)

In re Expulsion of N. C. by Kenosha Unified School District, Decision and Order No. 547 (State Superintendent of Pub. Instr. June 17, 2005)

In re Expulsion of O. S. by Racine Unified School District, Decision and Order No. 548 (State Superintendent of Pub. Instr. June 27, 2005)

In re Expulsion of D. H. by New Richmond School District, Decision and Order No. 549 (State Superintendent of Pub. Instr. June 30, 2005)

In re Expulsion of D. J. S. by Hartford Union High School District, Decision and Order No. 550 (State Superintendent of Pub. Instr. July 8, 2005)

In re Expulsion of M. R. by Kenosha Unified School District, Decision and Order No. 551 (State Superintendent of Pub. Instr. July 8, 2005)

In re Expulsion of D. S. by Cedar Grove-Belgium Area School District, Decision and Order No. 552 (State Superintendent of Pub. Instr. July 11, 2005)

In re Expulsion of T. by Madison Metropolitan School District, Decision and Order No. 553 (State Superintendent of Pub. Instr. July 15, 2005)

In re Expulsion of D. P. by Burlington Area School District, Decision and Order No. 554 (State Superintendent of Pub. Instr. July 29, 2005)

In re Expulsion of B. R. by Hamilton School District, Decision and Order No. 555 (State Superintendent of Pub. Instr. August 5, 2005)

In re Expulsion of S. V. by Milwaukee Public School District, Decision and Order No. 556 (State Superintendent of Pub. Instr. August 26, 2005)

In re Expulsion of T. M. by New Richmond School District, Decision and Order No. 557 (State Superintendent of Pub. Instr. September 26, 2005)

In re Expulsion of A. B. by Edgerton School District, Decision and Order No. 558 (State Superintendent of Pub. Instr. September 27, 2005)

In re Expulsion of S. S. by West Allis School District, Decision and Order No. 559 (State Superintendent of Pub. Instr. October 7, 2005)

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In re Expulsion of C. M. by Milwaukee Public Schools, Decision and Order No. 561 (State Superintendent of Pub. Instr. December 21, 2005)

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Handicapped children - see Special Education

Harassment

Jordan G. by the Pardeeville Area School
Dist., (521) July 26, 2004

C. E. W. by the Kenosha Unified School
Dist., (539) April 21, 2005

See also decision numbered 548.

Insubordination - see Defying authority

“Kill List”

Nathan by the Delavan-Darien School Dist., (391) July 23, 1999)

Damis M. by the Cadott School Dist., (397) Aug. 20, 1999

See also decisions numbered 402, 405, 407, 424 and 667.

Knife - see Weapon

LD (Learning Disability) - see Special Education

Marijuana – see Controlled Substances

M-Team (Multi-disciplinary Team) - see Special Education

MR (Mentally Retarded) - see Special Education

Pepper spray - use on school property

Tammi D. by the Greenfield School Dist., (313) March 11, 1997 (pp. 3, 4)

Physical assault or attack - see Assault and battery; see also Sexual misconduct

Pipe bomb - see Weapon

Profanity

- profane language generally

Raymond M. by the Wheatland Center School Dist., (110) Feb. 25, 1983

Roy H. by the Blair School Dist., (159) Sept. 26, 1988

See also decisions numbered 220, 225, 244, 260, 269, 296, 303, 308, 330, 420, 424 and 647.

- profane language toward school official

Jolene M. by the Webster School Dist.,
(112) May 9, 1983

Tom C. by the School Dist. of Lake
Holcombe, (115) Oct. 18, 1983

See also decisions numbered 147, 156,
160 and 227.

Property damage

Jason M. by the Germantown School
Dist., (179) June 27, 1991

Kristin J. P. by the Mukwonago Area
School Dist., (185) Feb. 21, 1992

See also decisions numbered 192, 227,
244, 247, 330, 418 and 656.

Repeated Refusal to Obey School Rules

Scott M. by Mercer School Dist., (448)
Dec. 18, 2001

Cory K. by Colfax School Dist., (469)
June 18, 2002

See also decisions numbered 475, 481,
492, 494, 500, 503, 509, 560, 569, 571,
573, 579, 642, 647, 655, 656 and 668.

Ring - see Weapon

Sexual misconduct

Sean H. by the Milwaukee School Dist.,
(106) Feb. 10, 1983

Earl N. by the Milwaukee School Dist.,
(111) Mar. 3, 1983

See also decisions numbered 114, 116, 130, 132, 186, 198, 201, 209, 278, 301, 398, 417, 472, 474, 476, 513, 514, 521, 539, 548, 555, 646 and 653.

- male thrusting pelvis in face of restrained female student, whether penis exposed or not.

C. L. by the Clayton School Dist., (599)
June 29, 2007

- touch and touching breast and vagina.

X. L. by the Clayton School Dist., (600)
June 29, 2007

- repeatedly engaging in sexually explicit conduct at school:

Taiwan O. W. by the Kenosha Unified School Dist., (186) Apr. 7, 1992 (p. 3)

- making sexual remarks to another student in the classroom:

O. S. by the Racine Unified School Dist., (548) June 27, 2005

- engaging in sexual intercourse at school:

Nicole R. by the Granton Area School Dist., (301) Sept. 19, 1996 (p. 5)

Andrew K by Southern Door County School Dist., (476) Aug. 1, 2002

- engaging in sexual intercourse on school bus:

Kathleen W. by the Tri-County Area School Dist., (130) May 10, 1985 (p. 10)

William S. by the Tri-County Area School Dist., (132) June 21, 1985 (p. 9)

See also decision numbered 501.

- engaging in sexual conduct on school trip:

David A. by the Kenosha Unified School Dist., (209) Aug. 2, 1993)

- verbal harassment and inappropriate touching:
Jordan G. by the Pardeeville Area School Dist., (521) July 26, 2004

Smoking - see Tobacco; see also Controlled substances

Special education

- Generally
Aaron R. by D.C. Everest School Dist. (472) July 18, 2002
Tyler H. by Milton School Dist. (498) June 23, 2003
See also decision numbered 510.
- ED (Emotionally Disturbed)
Anita P. by the School Dist. of Janesville, (124) Feb. 5, 1985
Joe M. by the School Dist. of Milton, (125) Feb. 22, 1985
See also decision numbered 135.
- EEN (Exceptional Educational Need)
William S. by the Suring School Dist., (98) June 17, 1982
Anita P. by the School Dist. of Janesville, (124) Feb. 5, 1985
See also decisions numbered 85, 86, 125, 135, 146, 159, 203, 219 and 233.
- LD (Learning Disability)

William S. by the Suring School Dist.,
(98) June 17, 1982

- M-Team (Multi-disciplinary Team)

William S. by the Suring School Dist.,
(98) June 17, 1982

Anita P. by the School Dist. of
Janesville, (124) Feb. 5, 1985

See also decisions numbered 125, 135,
146, 147, 183, 186, 195, 196, 200 and
214.

- MR (Mentally Retarded)

Joe M. by the School District of Milton,
(125) Feb. 22, 1985

Spitting

Robert D., Jr. by the School Dist. of
Crandon, (138) May 21, 1986

Stealing - see Theft

Strong Armed Robbery of Another Student

A.B. by the Milwaukee Public School
Dist., (657) March 4, 2010

Swearing - see Profanity

Tardiness

Adam F. by the Kenosha Unified School
Dist., (146) Oct. 24, 1986

Taunting staff

Carlos M. by the West Allis-West
Milwaukee School Dist., (242) Dec. 21,
1994

Theft

- generally

Richard W., Jr. by the Central High School Dist. of Westosha, (122) Sept. 13, 1984

Jesse F. by the Stanley-Boyd School Dist., (189) April 21, 1992

See also decisions numbered 196, 411 and 420.

- of school property

Tom C. by the School Dist. of Lake Holcombe, (115) Oct. 18, 1983

Michaelene J. by the Washington Island School Dist., (161) May 19, 1989

See also decisions numbered 165, 189 and 314.

Threatening others

Michelle R. by the Suring Pub. School Dist., (126) Mar. 7, 1985

Eric K. by the Rosholt School Dist., (142) June 18, 1986

See also decisions numbered 147, 157, 183, 200, 220, 230, 231, 303, 313, 348, 391, 397, 399, 402, 404, 405, 407, 410, 416, 417, 419, 420, 424, 432, 437, 464, 538, 543, 544, 555, 560, 569, 572, 583, 642 and 648.

Throwing scissors - see Disruptive behavior

Tobacco

- possession of tobacco

Eugene N. by the Flambeau School Dist., (113) May 9, 1983

Adam F. by the Kenosha Unified School Dist., (146) Oct. 24, 1986

See also decisions numbered 318, 420, 428, 467, 480, 492, 503 and 564.

- smoking tobacco

Jolene M. by the Webster School Dist., (112) May 9, 1983

Eugene N. by the Flambeau School Dist., (113) May 9, 1983

See also decisions numbered 114, 115, 146, 168, 170, 180, 219 and 492.

Truancy

Jolene M. by the Webster School Dist., (112) May 9, 1983

John R. by the Cochrane-Fountain City School Dist., (117) Feb. 9, 1984

See also decisions numbered 146, 180, 196, 280, 297, 318, 319 and 329.

Under cover police officer

James B. by Westfield School Dist. (496) June 10, 2003

Joe B. by Westfield School Dist. (497) June 10, 2003

Vandalism - see also Graffiti

Michelle R. by the Suring School Dist.,
(126) Mar. 7, 1985

Robert M. by the Kiel School Dist., (149)
Apr. 30, 1987

See also decisions numbered 255, 411,
469, 491 and 505.

Walking out of class - see Defying Authority

Weapon

- possession of weapon at school

Jesse K. by the School Bd. of Joint Dist.
No. 2 of Sun Prairie (and others), (131)
June 17, 1985

Leslie F. by the Milwaukee Pub Schools,
(136) Mar. 3, 1986

See also decisions numbered 143, 176,
181, 183, 188, 190, 192, 194, 195, 204,
205, 207, 208, 210, 212, 213, 216, 217,
222, 226, 228, 229, 230, 232, 236, 237,
240, 246, 248, 266, 286, 348, 368, 377,
426, 427, 429, 447, 499, 503, 508, 514,
515, 538, 547, 559, 574, 639, 659 and
667.

- possession of weapon away from school

Antonio M. by the Kenosha Unified
School Dist., (176) Apr. 18, 1991

Michael E. by the Oconomowoc Area
School Dist., (212) Dec. 3, 1993

See also decisions numbered 222, 447,
533 and 568.

- possession of weapon on bus

Jesse K. by the School Bd. of Joint Dist. No. 2 of Sun Prairie (and others), (131) June 17, 1985

Demetris S. by the Milwaukee School Dist., (194) June 8, 1992

See also decisions numbered 208, 220, 241 and 427.

- possession of firearm at school

Zachary J. C. by the Reedsburg School Dist. (508) April 8, 2004

N. C. by the Kenosha Unified School Dist., (547) June 17, 2005

possession of an unloaded BB gun at school and on a school bus:

Demetris S. by the Milwaukee School Dist., (194) June 8, 1992 (p. 3)

- possession of ammunition at school

Zachary J. C. by the Reedsburg School Dist. (508) April 8, 2004

Alec J. by the Hartford Jt. #1 School Dist., (405) Jan. 3, 2000

- allowing another student to conceal a gun and bullets in student's locker:

Rhiannon V. by the Muskego-Norway School Dist., (188) Apr. 21, 1992 (p. 5)

- swinging knife near other people's neck and chest

Stevin W. B. by the Baraboo School Dist., (256) July 20, 1995

- confronting another student while possessing a knife

Lyle S. by the Whitewater School Dist.,
(378) April 15, 1999

Jack M. by the Mercer School Dist.
(514) May 7, 2004

See also decision numbered 538.

- brandishing a loaded handgun on the way to school

Stephanie T. by the Milwaukee School Dist., (348) March 3, 1998

Shannon W. by Shorewood School Dist., (515) May 25, 2004

- detonating a pipe bomb and possessing pipe bombs, explosive-making materials, internet downloads related to bomb making, and a highlighted school map.

Alex M. by Racine Unified School Dist.,
(533) Feb. 15, 2005 (p. 2)

- lying regarding possession of weapon on school grounds

Lyle S. by the Whitewater School Dist.,
(378) April 15, 1999

Vadim S. by the Greenfield School Dist.,
(352) April 7, 1998

- planning and conspiring to obtain a pistol for the purpose of killing another student and/or collecting debts

Robert S. by the Milton School Dist.,
(380) May 12, 1999

Travis S. by the Spencer Public Schools School Dist. (402) September 13, 1999

See also decision numbered 404.

- pointing a weapon:

Christopher F. by the Milwaukee School Dist., (143) July 2, 1986 (p. 9)

Julius T. by the Milwaukee Public School Dist., (427) Dec. 7, 2000

- possession of a loaded gun on a school bus and in a locker at school:

Jesse K. by Joint Dist. No. 2, (131) June 17, 1985 (p. 6)

- possession of a knife at school

Stacey R. by the Milwaukee School Dist., (362) June 1, 1998

Lucas N. by the Whitewater Unified School Dist., (376) March 16, 1999

See also decisions numbered 378, 440, 441, 464, 499, 503, 507, 538, 549, 551, 559, 574, 641 and 651.

- use of a knife at school

Ericka T. by Milwaukee School Dist., (455) Feb. 13, 2002

- possession of a loaded handgun at school

Stephanie T. by the Milwaukee School Dist., (348) March 3, 1998

- possession of a razor blade at school

Fredell F. by the Milwaukee Public School Dist., (365) July 2, 1998

David D. by the Central High School District of Westosha (429) Jan. 25, 2001

See also decision numbered 514.

- possession of a tool with blade

Collin M. F. by the Beloit Turner School Dist., (537) April 13, 2005

- possession of a toy gun or “look-alike gun”

D. N. by the Germantown School Dist., (586) February 6, 2007

D. L. by the Wheatland Center School Dist., (613) March 27, 2008

- possession of look-alike weapon (cap gun)

Shawn F. by the Slinger School Dist., (231) 1994

Mark P. by the Slinger Middle School Dist., (234) Aug. 1, 1994

See also decision numbered 515.

- possession of unloaded, broken gun at school

Jack P. by the Crandon School Dist., (229) May 3, 1994

- possession of a utility knife in a classroom

James D. by the Greenfield School Dist., (352) April 7, 1998

- possession/placing of live ammunition at school

Alec J. by the Hartford Jt. #1 School District (405) Jan. 3, 2000

- possession of completely inoperable pellet gun (due to absence of CO-2 cartridge):

Jack P. by the Crandon School Dist.,
(229) May 3, 1994 (p. 6)

- possession of a "starter gun:"

Leslie F. by the Milwaukee School Dist.,
(136) Mar. 3, 1986 (pp. 7-8, 10)

- passing of a "starter gun" to another student:

Leslie F. by the Milwaukee School Dist.,
(136) Mar. 3, 1986 (p. 8)

- possession of a weapon off school grounds with an intent to deliver weapon to a friend knowing weapon would be brought onto school grounds without notifying school officials that weapon was on school grounds:

Kyle M. by Marshall School Dist., (447)
Dec. 11, 2001

- possession of live ammunition on school grounds:

Alec J. by the Hartford Jt. #1 School
Dist., (405) Jan. 3, 2000

Zachary J. C. by Reedsburg School
Dist., (508) April 8, 2004

- displaying a small, sharp screwdriver brought to school:

Christopher P. by the Shorewood
School Dist., (192) May 18, 1992 (p. 3)

- possession of a knife on school premises.

Jesse M. K. by the Tri-County Area
School Dist., (266) Jan. 2, 1996 (p. 6)

Stacey R. by the Milwaukee School
Dist., (362) June 1, 1998

See also decisions numbered 376, 378,
440, 464, 499, 503, 507, 514, 549, 551,
559 and 606.

- possession and use of a knife:
Ericka T. by Milwaukee School Dist.,
(455) Feb. 13, 2002
- possession of a "butterfly" knife on school premises:
Shane M. B. by the Green Bay Area
Public School Dist., (190) Apr. 21, 1992
(pp. 2-3)
- possession of a spring-loaded knife on school premises:
Brian V. by the Shorewood School Dist.,
(195) June 8, 1992 (p. 3)
- possession of a single blade hunting knife where
student argued that in a rural school district such a
knife is not a dangerous weapon:
Bradley F. by the Tri-County Area
School Dist., (240) Nov. 30, 1994 (p. 4)
- possession of a hunting knife even though board
made no finding that student intended to harm
another:
Bradley F. by the Tri-County Area
School Dist., (240) Nov. 30, 1994 (p. 4)
- possession of four knives on school bus:
Travis M. by the Tri-County Area School
Dist., (241) Dec. 8, 1994 (p. 2)
- confronting another student while possessing a knife:
Lyle S. by the Whitewater School Dist.,
(378) April 15, 1999
Jack M. by Mercer School Dist., (514)
May 7, 2004

See also decision numbered 538.

- possession of a bladed tool:
 - Collin M. F. by Beloit Turner School Dist., (537) April 13, 2005

- planning and conspiring to obtain a pistol for the purpose of killing another student and/or collecting debts:
 - Robert S. by the Milton School Dist., (380) May 12, 1999

- possessing a razor blade at school:
 - Fredell F. by the Milwaukee Public School Dist., (365) July 2, 1998
 - David D. by the Central High School Dist. of Westosha, (429) Jan. 25, 2001
 - See also decision numbered 514.

- possessing a utility knife in a classroom:
 - James D. by the Greenfield School Dist., (352) April 7, 1998
 - Tyler M. by Silver Lake Jt 1 School Dist., (511) April 26, 2004

- setting off firecrackers near another person's head:
 - Travis V. by the Waterloo School Dist., (144) July 2, 1986 (p. 7)

- lighting a firecracker in the school building:
 - Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (pp. 3-4)

- lighting a pipe bomb and throwing it out the back door of the school:
 - Jerrett N. by the Baraboo School Dist., (183) Dec. 23, 1991 (pp. 2, 6)

- throwing a pair of sewing shears across school room:

Roy H. by the Blair School Dist., (159)
Sept. 16, 1988 (p. 9)

- throwing scissors in class:

Joseph F. by the Almond-Bancroft School Dist., (191) May 13, 1992 (p. 3)

- striking a teacher:

Brandon G. by the West DePere School Dist., (160) Apr. 27, 1989 (p. 7)

- shoving security officer:

Vadim S. by the Madison Metropolitan School Dist., (368) July 29, 1998

- battery to a school district staff person:

Isaac S., II by the Milwaukee School Dist., (187) Apr. 21, 1992 (pp. 2, 4)

Jakeiya C. by Greenfield School Dist., (493) May 6, 2003

- throwing pencil at a teacher:

Lavell A. by the Kenosha School Dist., (147) Jan. 12, 1987 (p. 6)

- stabbing student with a pencil:

Joshua S. by Madison Metropolitan School Dist., (525) Oct. 20, 2004

- padlock – hitting someone with

Nickenia S. by the Milwaukee Public School Dist., (528) Jan. 11, 2005

T. J. by the Madison Metropolitan School Dist., (553) July 15, 2005

- pencil – stabbing with

Joshua S. by the Madison Metropolitan School Dist., (525) Oct. 20, 2004

Painting obscenities on building:

Keith A. by the Iola-Scandinavia School Dist., (133) Feb. 10, 1986 (p. 4)

Mike M. by the Iola-Scandinavia School Dist., (134) Feb. 10, 1986 (p. 4)

See also decision numbered 491.

Attempting to carve on a sewing machine counter top piece:

Christopher P. by the Shorewood School Dist., (192) May 18, 1992 (p. 3)

Theft of keys from the school office:

Jesse F. by the Stanley-Boyd School Dist., (189) Apr. 21, 1992 (pp. 3-4)

Burglary:

Ericka T. by the Milwaukee School Dist., (455) Feb. 13, 2002

A. O. by the Janesvilles School Dist., (621) May 15, 2008

Theft of confidential correspondence and files of school:

Michaelene J. by the Washington Island School Dist., (165) Aug. 1, 1989 (p. 14)

Compromising the security of the school's computer network by illegally obtaining and using a staff member's password:

D. J. S. by the Hartford Union High School Dist., (550) July 8, 2005

Unplugging school buses on a below zero morning left students standing on corners waiting for a bus and “endangered” the property, health and safety of others:

Christopher W. by the Tomah Area School Dist., (247A) Apr. 21, 1995 (p. 7)

Displaying a bomb threat from the back window of a school bus on a school trip:

Curtis B. by the Marinette School Dist., (519) June 25, 2004

Operating vehicle on school property after consuming alcohol and with alcohol in car:

Daniel A. by the Mauston School Dist., (324) May 8, 1997 (pp. 4, 5)

Withdrawal Agreements

Todd N. by the Elmbrook School Dist. (477) August 22, 2002

Withdrawal of Appeal

Joseph S. by the Oconomowoc Area School Dist., (478) Sept. 4, 2002

Brittany B. by the Westfield School Dist., (523a) August 17, 2004

Writing a kill/hit list:

Nathan by the Delavan-Darien School Dist., (391) July 23, 1999

Damis M. by the Cadott School Dist., (397) August 20, 1999

See also decisions numbered 402, 405, 407, 424 and 667.