



State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

October 2, 2007

Attorney General J.B. Van Hollen
Room 114 E
State Capitol
Madison WI 53702-0001

Re: Request for Opinion regarding the applicability of Wis. Stat. §120.13(1)(f)

Dear Mr. Van Hollen:

Pursuant to Wis. Stat. §165.015(1) and on behalf of the State Superintendent of Public Instruction, I request a formal Attorney General's opinion on the applicability of Wis. Stat. §120.13(1)(f) to student expulsions that are ordered by an out of state public school or by a private school either in or out of Wisconsin. Specifically, I am asking that the following three questions be answered:

1. May a Wisconsin school district rely upon Wis. Stat. §120.13(1)(f) to deny enrollment to a pupil who is currently expelled from an out of state public school?
2. May a Wisconsin school district rely upon Wis. Stat. §120.13(1)(f) to deny enrollment to a pupil who is currently expelled from an out of state public school because the pupil has been found to have violated the Gun Free Schools Act, 20 USC 7151?
3. May a Wisconsin school district rely upon Wis. Stat. §120.13(1)(f) to deny enrollment to a pupil who is currently expelled from a private school?

1995 Wisconsin Act 29 created section 120.13(1)(f), which states

“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.”

The department often receives questions from Wisconsin school districts regarding whether the district may rely upon §120.13(1)(f) to deny admission of a resident pupil in the district based on the student's expulsion from school in another state or expulsion from a private school. The department has consistently informed districts that §120.13(1)(f) is limited to expulsions ordered by another Wisconsin public school district. Now, a major metropolitan school district has asked for a formal written opinion on this topic. Because the department's interpretation is widely known yet apparently challenged by at least this one district, the department is requesting a formal opinion from you.

The department has based its interpretation on many factors, including statutory construction and public policy. Wis. Stat. §120.13(1)(f) applies to students who have been expelled by another "school district" and references the obligations of school districts regarding pupil records as described in Wis. Stat. §118.125. The term "school district" is defined in Wis. Stats. §115.01(3) as "the territorial unit for school administration. School districts are classified as common, union high, unified and 1st class city school districts. A joint school district is one the territory of which is not wholly in one municipality." These are school district organization structures unique to Wisconsin. The term "school district" is used, without inclusion of the word "Wisconsin" throughout chapters 115-121 to mean Wisconsin public schools. For example, in §115.28(13), the state superintendent prescribes a uniform accounting system applicable to "all school districts"; in §115.366, the state superintendent is required to "award grants to school districts..."; throughout ch. 117 school district is used to describe school district reorganization; and ch. 121 is replete with references to school district as it describes the process for paying state aid to Wisconsin public school districts. The department therefore has read this provision to apply exclusively to expulsions ordered by a Wisconsin public school district and to not apply to an expulsion ordered by an out of state school or a private school.

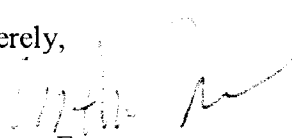
In addition to the statutory analysis, public policy also supports the department's position. Wis. Stat. §120.13(1)(f) is a legislatively created exception to the state constitutional right to a public education at no cost. Article 10, Sec. 3. Presumably, the legislature enacted this exception knowing that Wisconsin affords greater procedural due process protections than required by the federal constitution as described in *Goss v. Lopez*, 419 U.S. 565 (1975). Not every state has these same protections. Wisconsin limits the grounds for expulsion to those listed in §120.13(1)(c). Except for the ground found in §120.13(1)(c)2m., each state may establish its own grounds for expulsion. Section 120.13(1)(c)2m. requires a district to commence expulsion proceedings and expel the pupil for at least one year if the pupil is found to have possessed a firearm at school or under the supervision of a school authority. This is consistent with the federal law requirements of the Gun Free Schools Act, 20 USC §7151. However, each state determines the procedural due process requirements applicable in the expulsion proceeding.

The district currently challenging the department's interpretation has argued that they should be allowed to examine the situation on a case by case basis. If the district determines that the student was expelled in the other state for an offense which is expellable under Wisconsin law and if there is *prima facie* evidence that the procedural rights guaranteed in Wisconsin were followed, the district should be allowed to deny the pupil's constitutional right to a public education without cost. The district argues that not applying the statutory exception to out of

state expulsions creates a “safe haven” for expelled pupils, treats students differently based on prior residence, and permits students who have engaged in serious misconduct to enter school.

While the department understands the concerns of the district, it continues to believe that the statute, as written, does not permit this expanded interpretation. Given this dispute, I respectfully request a formal opinion from you on the application of §120.13(1)(f) to out of state expulsions, including expulsions made under the Gun Free Schools Act, and to private school expulsions. If you need further information, please contact our agency legal counsel, Sheri Pollock at 608-266-8762.

Sincerely,



Anthony Evers

Deputy State Superintendent of Public Instruction