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April 10, 2008 OAG—5—08

Mr. Anthony Evers
Deputy State Superintendent
Department of Public Instruction
125 South Webster Street
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Dear Mr. Evers:

You have requested my opinion on three questions relating to the applicability of section 120.13(1)(f) of the Wisconsin Statutes to student expulsions that are ordered by an out-of-state public school or by a private school either inside or outside of Wisconsin. The statute in question provides as follows:

> 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.

Sec. 120.13(1)(f), Wis. Stats. According to your letter, the Department of Public Instruction ("DPI") has consistently construed the above statute as authorizing a school board to deny enrollment *only* to a pupil who has been expelled from another *Wisconsin public* school district and as *not* authorizing a school board to deny enrollment to a pupil who has been expelled from an out-of-state public school district or from a private school.

You indicate that a major metropolitan school district in Wisconsin is now challenging DPI's interpretation and contending that section 120.13(1)(f) allows a school board to deny enrollment to a pupil who has been expelled from an out-of-state public school district or from a private school, as long as the school board determines that the conduct for which the pupil was expelled would also be a valid ground for expulsion from a Wisconsin public school district and that there is *prima facie* evidence that the expelled pupil was afforded the same procedural rights that would have been required in a public school expulsion proceeding in Wisconsin.

Accordingly, you ask the following three questions:

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?

For the reasons that follow, it is my opinion that DPI's interpretation is correct and that section 120.13(1)(f) does not allow a school board to deny enrollment to a pupil who is currently expelled either from an out-of-state public school district or from a private school. The answer to each of the above questions, therefore, is no.

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?

In order to answer this question, it is necessary to determine whether the phrase "another school district," as used in section 120.13(1)(f), can be read as including public school districts in other states, in addition to those in Wisconsin. When addressing such questions of statutory interpretation, the language of the statute must be construed according to its plain meaning, giving terms their common, ordinary, and accepted definitions, with the exception of technical or specially-defined words and phrases. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110. In addition, statutory language is to be understood not in isolation, but with an eye to the structure of the statute as a whole and to the language of surrounding or closely-related statutes. *Id.*, ¶ 46. Here, both the applicable statutory definition of the term "school district" and the plain language of section 120.13(1)(f), when viewed in relation to its statutory structure and other related statutes, support the conclusion that, when the Legislature used that term in that statute, it was referring only to the individual territorial units that administer the public educational system of the State of Wisconsin.

Although section 120.13(1)(f) does not itself expressly define the term "school district," that term is defined in section 115.01(3), which provides that, throughout chapters 115 through 121 of the Wisconsin Statutes, "[t]he school district is the territorial unit for school administration." Because the Wisconsin Statutes cannot define the territorial units for school administration in any state other than Wisconsin, this suggests that the term "school district," as

used in those chapters, is geographically limited to Wisconsin. The same statutory provision also classifies school districts as "common, union high, unified and 1st class city school districts." Because that particular classification structure is unique to Wisconsin, it, too, suggests the same geographic limitation. I conclude, accordingly, that the statutory definition of "school district" applicable to section 120.13(1)(f) includes only Wisconsin school districts.

In addition to that statutory definition, the plain language of section 120.13(1)(f), when viewed with an eye to the overall structure of that statute and to the language of related statutes, likewise supports the same conclusion. First, the second sentence of section 120.13(1)(f) requires "the former school district"—*i.e.*, the other district that has already expelled the pupil—to provide records and information related to the expulsion to "the latter school district"—*i.e.*, the district currently being asked to enroll the pupil. Because the Wisconsin Legislature has no jurisdiction to impose such a requirement on out-of-state school districts, it is clear that the Legislature intended section 120.13(1)(f) to apply only to situations involving pupils who have been expelled from a Wisconsin public school district.

Second, as your letter rightly notes, the term "school district" is frequently used, throughout chapters 115 to 121, in ways that only make sense when viewed as referring to districts within this state. *See, e.g.*, sec. 115.28(13), Wis. Stats. (requiring the state superintendent of public instruction to prescribe a uniform accounting system applicable to "all school districts"); sec. 115.366, Wis. Stats. (requiring DPI to award grants for alternative education programs "to school districts"); sec. 120.05(1), Wis. Stats. (defining the officers of a school district); ch. 117, Wis. Stats. (governing the reorganization of school districts); and ch. 121, Wis. Stats. (providing for state financial aid to school districts).

Third, the Wisconsin Constitution expressly requires the Legislature to provide a system of public education for the state through "the establishment of district schools." Wis. Const. art. X, § 3. Accordingly, the Wisconsin Supreme Court has repeatedly recognized that a school district "is an agent of the state for the purpose of administering the state's system of public education." *Green Bay Met. S. Dist. v. Voc. T. & A. Ed. Dist. 13*, 58 Wis. 2d 628, 638, 207 N.W.2d 623 (1973) (quoting *Zawerschnik v. Joint County School Comm.*, 271 Wis. 416, 429, 73 N.W.2d 566 (1955)). The Legislature has likewise declared, as a state policy, that "education is a state function." Sec. 121.01, Wis. Stats. The constitutional basis of the school district system in Wisconsin and the status of school districts as agents of the state also support the conclusion that the term "school district," as used in the Wisconsin Statutes, is meant to refer only to public school districts within this state.

Public policy reasons also support the same conclusion. As your letter correctly notes, the statutorily mandated procedures for a public school expulsion proceeding in Wisconsin under section 120.13(1)(a)-(e) afford pupils greater procedural protections than are mandated in such proceedings by the due process clause of the federal constitution, as construed in *Goss v. Lopez*, 419 U.S. 565 (1975). If section 120.13(1)(f) is construed as applying to a pupil expelled by a

school district in another state, then it could authorize a Wisconsin school board to deny public-school enrollment to a pupil who had been expelled in another state without having received all of the procedural protections that would have been mandated in a Wisconsin expulsion proceeding under subsections (a) through (e) of the same statute. The Legislature cannot be presumed to have intended such a counter-intuitive result.

Nor can such a result be avoided by reading into section 120.13(1)(f) an unwritten requirement that a school board wishing to deny enrollment under that statute to an expelled pupil from another state must first determine that the pupil was afforded the same procedural rights in the out-of-state expulsion proceeding that would have been available under section 120.13(1)(a)-(e). In order to make such a determination, the Wisconsin school board would have to conduct an inquiry into the nature of the other state's expulsion proceeding. As already noted, however, there is no requirement that an out-of-state school district provide any factual information about its expulsion proceedings to a Wisconsin school board. The Legislature cannot have intended to require school boards to make factual determinations about matters that they lack sufficient power to adequately investigate. Furthermore, it is axiomatic that school districts in Wisconsin have only such powers as are conferred upon them expressly or by necessary implication. *Buse v. Smith*, 74 Wis. 2d 550, 601, 247 N.W.2d 141 (1976). Nothing in section 120.13(1)(f) expressly or by necessary implication gives Wisconsin school districts the power to investigate the adequacy of expulsion proceedings in other states.

Finally, I note that, to the extent that DPI has been charged by the Legislature with the duty of itself administering or enforcing section 120.13(1)(f), DPI's own long-standing interpretation of that statute could be entitled to judicial deference. *See UFE Inc. v. LIRC*, 201 Wis. 2d 274, 284-87, 548 N.W.2d 57 (1996); *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 659-60, 539 N.W.2d 98 (1995). It is unclear from your letter whether DPI performs administrative or enforcement functions under section 120.13(1)(f). To the extent that it does so, however, a court would give DPI's view of that statute either "great weight" or "due weight," depending on the extent, if any, to which that view is based on specialized knowledge or expertise that places DPI in a better position than a court to make judgments about the statute's meaning. *Id.*

For all of the above reasons, it is my opinion that a Wisconsin school district may not rely upon section 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?

The federal Gun-Free Schools Act, 20 U.S.C. § 7151, provides, in part, as follows:

> Each State receiving Federal funds under any subchapter of this chapter shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than 1 year a student who is determined to have brought a firearm to a school, or to have possessed a firearm at a school, under the jurisdiction of local educational agencies in that State, except that such State law shall allow the chief administering officer of a local educational agency to modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.

20 U.S.C. § 7151(b)(1).

The State of Wisconsin has complied with the above requirement by enacting section 120.13(1)(c)2m., which requires a school board to commence expulsion proceedings against and to expel for at least one year any pupil found to have possessed a firearm while at school or under the supervision of a school authority. Furthermore, if a pupil who has been expelled from a Wisconsin school district under section 120.13(1)(c)2m., seeks to enroll in another Wisconsin school district during the term of the expulsion, then section 120.13(1)(f) allows the latter school district to deny the pupil's enrollment request, thereby ensuring that the pupil remains expelled for one year, consistent with the federal law.

The federal law does not, however, require Wisconsin school districts to give effect to school expulsions from other states. On the contrary, the plain language of 20 U.S.C. § 7151(b)(1) expressly applies only to a student who has brought a firearm to, or possessed a firearm in, a school that is "under the jurisdiction of local educational agencies *in that State*" (emphasis added). It is, thus, clear that Congress did not intend the Gun-Free Schools Act to require states to expel (or recognize expulsions of) students based on the conduct of those students at schools in other states.

For these reasons, in addition to those already given in response to your first question, it is my opinion that a Wisconsin school district may not rely upon section 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.

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?

The statutes of the State of Wisconsin do not provide for public regulation of pupil expulsions from private schools within this state. As I have already shown in response to your first question, however, the phrase "another school district," as used in section 120.13(1)(f), must be understood as referring only to the individual territorial units that administer the public educational system of the State of Wisconsin. The same reasoning equally supports the conclusion that "another school district" also cannot be construed as including a private school.

Moreover, a pupil who has been expelled from a private school clearly has not been expelled from a "school district," within the meaning of section 120.13(1)(f), for the simple reason that an individual "school" is not the same as a "school district." Furthermore, because a "school district," under Wisconsin law, is an agent of the state for the purpose of administering the state's system of public education, it is an inherently public, rather than private, entity. If section 120.13(1)(f) were intended to apply to pupils expelled from private schools, it would expressly refer to "expulsion from another school," rather than to "expulsion from another school district."

Finally, the Missouri court of appeals, in *Hamrick v. Affton School Dist. Bd. of Educ.*, 13 S.W.3d 678 (Mo. App. E.D. 2000), construed a similar Missouri statute which allowed a school district in that state, under specified conditions, to give effect to "a suspension or expulsion from *another school district*." *Id.* at 680 (emphasis in original) (quoting Mo. Rev. Stat. § 167.171.4 (1998)). The court held, for reasons similar to those given in this opinion, that the statute did not apply to a parochial, non-public school. *Id.* at 681. Following that court decision, the Missouri Legislature amended the statute in question to expressly authorize school districts in that state to give effect to expulsions from out-of-state school districts or private schools. *See* Mo. Rev. Stat. § 167.171.4 (2007); 2000 Mo. Laws S.B. No. 944, § A. Both the *Hamrick* decision and the legislative response to it reinforce my conclusion that section 120.13(1)(f), which does not contain the kind of express authorization that was added to the Missouri statute, does not allow a Wisconsin school board to deny enrollment to a pupil who is currently expelled from a private school.

Sincerely,

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Attorney General

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