Decision and Order No.: 445

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Ryan S. by Pewaukee School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX19

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Pewaukee School District Board of Education to expel the above-named pupil from the Pewaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 27, 2001.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), this Decision and Order is confined to a review of the record of the school board hearing. The state superintendent's review authority is specified in § 120.13(1)(c). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated April 12, 2001, from the Associate Principal of Pewaukee High School. The letter advised a hearing would be

held on April 26, 2001 that could result in the pupil's expulsion from the Pewaukee School District. The letter alleged that the pupil engaged in conduct while at school or on school property, in a district owned or contracted vehicle or at a school sponsored activity which endangered the health, or safety of others. It also alleged that the pupil engaged in conduct while not at school or while not under the supervision of a school authority 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 student is enrolled." The letter alleged that Ryan was "involved in the use, possession, disbursement, distribution, manufacture, transfer, sale or possession with intent to sell controlled substances, alcohol or drug paraphernalia (as defined by local, state and federal statues(sic))". A transcript of the hearing is part of the record.

The hearing was held in closed session on April 26, 2001. Neither the pupil nor his parents appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the school board deliberated in closed session. The board found the pupil did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated May 21, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday.

DISCUSSION

School districts are limited-purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District,* 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited to that set out in § 120.13(1)(c). In *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "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." *Id.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). It is, therefore, incumbent upon the state superintendent in reviewing an expulsion decision to ensure that the required statutory procedures were followed, that the school board's decision is based upon one of the established statutory grounds, and that the school board is satisfied that the interests of the school district demand the pupil's expulsion.

The appeal letter in this case raises two issues that require consideration. The parent alleges that the punishment was too severe and that there was no evidence to support the finding that Ryan engaged in conduct on school grounds or under school supervision, that endangered the health, safety or property of others. Since the authority to "approve, reverse or modify the

decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education,* Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education,* Decision and Order No. 206 (May 3, 1993). In addition, it has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). A school board's findings will be upheld if any reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Daniel A. v. Mauston School District Board of Education,* Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). The board heard evidence that Ryan admitted he possessed marijuana and negotiated the sale of it while on the school bus. Now, Ryan disputes this admission, however, he did not attend the expulsion hearing to dispute it before the board.

The board was in the best position to resolve this conflict in testimony. It was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. See e.g. *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, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). Finally, the school board is in the best position to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination.

However, the district did not comply with all of the statutory requirements. It is unclear from the record whether separate notices were sent to the pupil and his parents. On August 28, 2001, the department requested the board's attorney to provide evidence of how the notice of expulsion hearing was given or sent to the pupil and his parents. As of the date of this order, neither the board nor their attorney has responded to the request. Thus, I cannot find that the board mailed or otherwise sent notice of the expulsion hearing separately to the pupil and his parents. This error requires reversal. See *Ryan C. K. v. Pewaukee School District* , Decision and Order No. 439 (July 24, 2001); *Raymond K. v. Phillips School District*, Decision and Order No. 435 (June 25, 2001). This is not a hidden or onerous obligation on the school district. Section 120.13(1)(c)4. requires the school district to send notice of the expulsion hearing to the pupil **and** his or her guardian. When the word "and" is used in a statute, it means both of the stated requirements must be met. *Trojan v. U.W. Board of Regents*, 128 Wis. 2d 270, 273 (1985). In addition, when the legislature amended the statute in 1973, it specifically extended to individual pupils the right to prior notice of the hearing. Laws of 1973, ch. 94. Before the 1973

amendment, these individual pupil rights did not exist in the law. The state superintendent has routinely held 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. See *Michelle R. v. Suring Public Schools Board of Education*, Decision and Order No. 126 (March 7, 1985), citing *Muskego-Norway Consolidated Schools v. WERB*, 32 Wis. 2d 478, 83 (1967); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990); *Russell B. v. Muskego-Norway School District*, Decision and Order No. 175 (February 29, 1991); *Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Phillip C. v. Wausaukee School District Board of Education*, Decision and Order No. 280 (March 22, 1996); *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996).

The state superintendent has previously overturned expulsions where both the pupil's and parent's notice were provided to the pupil. *John K. v. Wisconsin Rapids School District,* Decision and Order No. 178 (May 17, 1991). Providing two notices in one envelope addressed to the parents is not distinguishable. Furthermore, the state superintendent has previously cautioned districts that mailing two copies of a notice addressed to parents in one envelope raises a serious question as to compliance with the requirement of separate notices. *Shawn F. v. Slinger School District*, Decision and Order No 231 (June 9, 1994). It also has been determined that mailing the student's copy of the notice of hearing to the father's work address does not comply with the statute. *Issac S. v. Milwaukee Public School District*, Decision and Order No. 187 (April 21, 1992). "To find otherwise would eviscerate the legislature's clear directive that pupil and parental rights are to be treated as distinct and separate in these matters. Although pupil and

parental interests may frequently coincide, that is not always the case and the legislature has clearly directed school districts not to assume these interests to be one in the same." *Issac S. v. Milwaukee Public School District*, Decision and Order no. 187 (April 21, 1992).

In addition to this error, the notice of expulsion hearing did not provide the particulars of misconduct that Ryan allegedly engaged in. Section 120.13(1)(c)4. requires that not less than five 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. The **notice shall state all** of the following:

> ...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...

It is well established that a student is entitled to due process at an expulsion hearing. *Goss v. Lopez*, 419 U.S. 565 (1975); *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W. 2d 334 (1982). It is also well established that notice is an integral part of procedural due process in these situations. A student facing expulsion is entitled to timely and adequate notice of the charges against him or her so as to allow a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). Furthermore, § 120.13(1)(c)4. clearly requires notice of the specific grounds for expulsion and the particulars of the alleged misconduct. Expulsions have been repeatedly overturned for failure to include this in the notice. See *Ryan C. K. v. Pewaukee School District* , Decision and Order No. 439 (July 24, 2001); *Bradley Scott P. v. Menasha Joint School District Board of Education,* Decision and Order No. 197, (August 21, 1992); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986).

Particulars [of misconduct] are not defined in the statute. However, it is not an ambiguous or unknown term. When interpreting a statute, we must give effect to the ordinary and accepted meaning of the language chosen by the legislature. Wis. Stat. §990.01(1) (1999-2000); Seider v. O'Connell, 2000 WI 76, ¶32, 236 Wis.2d 211, 612 N.W.2d 659. The definition of *particulars* requires items or details of information, not generalizations. *See The American Heritage® Dictionary of the English Language*: Fourth Edition. 2000.[1] The notice of expulsion hearing utilized a "one-size fits all" description of the particulars of the alleged misconduct. The notice states, " Ryan was using, possessing, disbursing, distributing, manufacturing, transferring, selling or possessing with intent to sell controlled substances, alcohol or drug paraphernalia (as defined by local, state and federal statues)." This does not advise Ryan what particular misconduct would be considered. At the hearing, the board was presented evidence of conduct that occurred both on and off school grounds. There was no allegation or evidence involving the manufacturing of drugs, alcohol, or drug paraphernalia, nor any involving the use, possession, disbursement, distribution, manufacture, transfer, sale, or possession with intent to sell alcohol or drug paraphernalia. The use of this blanket statement does not contain the particulars of misconduct. 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. The notice in this case is an overly broad statement that does not adequately apprise the pupil of what will be considered so he can adequately prepare for the hearing. This does not constitute adequate notice and requires reversal.

[1] Particular, n. **1.** An individual item, fact, or detail: *correct in every particular.* See synonyms at item. **2.** An item or detail of information or news. Often used in the plural: *The police refused to divulge the particulars of the case.* **3.** A separate case or an individual thing or instance, especially one that can be distinguished from a larger category or class. Often used in the plural: *"What particulars were ambushed behind these generalizations?"* (Aldous Huxley).

Because the board did not comply with the notice requirements of §120.13(1)(c)4., I am compelled to overturn the expulsion. It has long been precedent that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Todd M.G. v. Wonewoc-Union Center School District Board of Education*, Decision and Order No. 416 (June 13, 2000); *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education,* Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education,* Decision and Order No. 143 (July 2, 1986). Thus, the failure to send the hearing notice separately to the pupil and his parents and the failure to include the particulars of alleged misconduct require me to overturn the expulsion. The board may cure the error by providing proper notice of the expulsion hearing, re-hearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415 (May 24, 2000); *Nick N. v. Elcho School District Board of Education,* Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education,* Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

This decision does not condone the pupil's behavior, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statute.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, overturn this expulsion.

CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Ryan S by the Pewaukee School District Board of Education is reversed.

Dated this 25th day of Sept., 2001

Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction