

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Eric Paul H.</p> <p>by Mishicot School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX04</p>
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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 Mishicot School District Board of Education to expel the above-named pupil from the Mishicot School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 11, 2002.

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 December 11, 2001, from the district administrator of the Mishicot School District. The letter advised a

hearing would be held on December 18, 2001 that could result in the pupil's expulsion from the Mishicot School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority that disrupted the ability of school authorities to maintain an educational environment under Wis. Stats. §10.13 and that he engaged in conduct while not at school which endangered the property, health or safety of others under Wis. Stats. §120.13(1)(d). The letter did not contain any specific allegations of misconduct; it merely stated that the administration recommended that the pupil be expelled for repeated refusal to comply with school rules and threatening the safety of the staff and students of the Mishicot School District.

The hearing was held in closed session on December 18, 2001. The pupil's mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence to support its recommendation for expulsion. The pupil's parent was given an opportunity to address the board and present her views.

After the hearing, the school board deliberated in closed session. The board voted to expel Eric until August 1, 2003. The school board further found that the interests of the school demand the student's expulsion. A letter was sent on or about December 19, 2001 advising Eric and his mother that the board voted to expel him until August 1, 2003. Minutes of the school board expulsion hearing are part of the record.

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.

In reviewing the record in this case, I find several procedural errors that require reversal of the expulsion. First, the notice of expulsion hearing was insufficient. 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).

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...

The notice did not meet this requirement. The grounds as stated in the notice of expulsion hearing are not included in the statutes. The first ground alleged that Eric "engaged in conduct while at school or under the supervision of a school authority that disrupted the ability of school authorities to maintain an educational environment at school." I can only assume that the administration was referencing the ground for expulsion contained in §120.13(1)(c)2. However, when alleging that a pupil should be expelled under this ground, the notice must include allegations that 1) the pupil be 16 years old; 2) the pupil repeatedly engaged in conduct; and 3) no other ground listed in §120.13(1)(c)1. The second ground alleged that Eric "engaged in conduct while not at school which endangered the property, health or safety of others under Wis. Stats. 120.13(1)(d)." Again, I must assume what section of the statute the administration is referring to and I conclude it meant to reference a ground contained in §120.13(1)(c)1. that refers to conduct that occurs off school grounds but endangers others at school, school employees, or board members. However, when alleging that a pupil should be expelled under this ground, the notice must include allegations that the pupil's conduct endangered others at school or under the school's authority or school employees or board members. The notice did not contain this information. Failure to list one or more of the grounds for expulsion, as they are listed in the statute, requires reversal.

In *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214, (December 21, 1993), my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, **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. Citing *John K. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 178 (May 17, 1991).

The administration also failed to include the particulars of misconduct as required by the statute. Instead, the board made broad assertions that Eric repeatedly refused to comply with school rules and that he threatened the safety of staff and students at the school district. §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 Board of Education*, 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

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

used in this case did not advise the pupil of the specific conduct that the administration intended to prove to the board as conduct requiring expulsion. The notice must include enough details to put the pupil and his parents on notice of all the conduct, as well as when and where it happened, that supplies the basis for the expulsion. This was not provided in this case.

In addition, the board failed to issue an expulsion order. An expulsion order is clearly required by statute, §120.13(1)(c)3. The order should contain the statutory basis the board relied upon to order expulsion and a finding that the board is satisfied that the interest of the school demand the pupils expulsion. See *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Clarence S. v. Bonduel School District Board of Education* Decision and Order No. 320 (April 10, 1997); *Robin L. v. East Troy Community School District Board of Education*, Decision and Order No. 253 (June 21, 1995); *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994). In this case, the only notice the parents were sent² was a letter from the District Administrator advising them that the board voted to expel Eric until August 1, 2003. The letter did not contain any of the board's findings. This requires reversal.

The board may cure these errors by providing proper notice of the expulsion hearing, re-hearing the expulsion, creating a written expulsion order 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*

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).

² There is no evidence, such as an affidavit of mailing or copy of an envelope or certified mail receipt to show that anything was sent to the pupil and his parents separately.

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 statutes. I also commend the board for offering alternative education during Eric's expulsion.

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

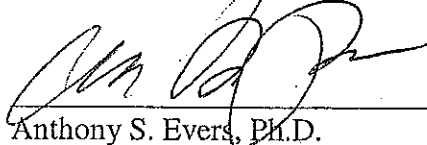
CONCLUSIONS OF LAW

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 Eric Paul H. by the Mishicot School District Board of Education is reversed.

Dated this 11th day of March, 2002



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