

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Melissa R'</p> <p>by Westfield School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX24</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 Westfield School District Board of Education to expel the above-named pupil from the Westfield School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 19, 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 June 3, 2002, from the district administrator of the Westfield School District. The letter advised a hearing

would be held on June 19, 2002 that could result in the pupil's expulsion from the Westfield School District. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter did not include the specifics of conduct which the administration considered to endanger the health, property or safety of others. The notice merely stated that the expulsion proceeding is based upon Melissa's alleged acts of "severe misbehavior and disrespect for authority".

The hearing was held in closed session on June 19, 2002. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found the pupil repeatedly refused or neglected to obey the rules. 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 June 19, 2002. The order stated the pupil was expelled through June 5, 2003 with an opportunity for early readmission in January 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.

There are several procedural errors that require reversal of this expulsion. First, the notice of the expulsion hearing did not contain all of the elements required by Wis. Stats. §120.13(1)(c) 4. 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. *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 In this case, the district did not provide any item or detail of information, instead it relied upon the generalized statement of “severe misbehavior and disrespect for authority”. This does not meet the statutory requirement. See *Ryan C. K. v. Pewaukee School District*, Decision and Order No. 439

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).

(July 24, 2001); *Derek P. v. Holmen School District Board of Education*, Decision and Order No. 399, (August 20, 1999); *James R. v. West Bend School District Board of Education*, Decision and Order No. 396, (August 17, 1999); *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).

Secondly, in the notice of expulsion hearing, the administration relied upon the expulsion ground in §120.13(1)(c)1. that Melissa's conduct while at school or under the supervision of a school authority, endangered the property, health or safety of others at school or under the supervision of a school authority. This is a valid ground for expulsion. However, the board's expulsion order references a different ground for expulsion. The board found that her conduct was evidence of repeated refusal or neglect to obey the rules.

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 a different statutory ground for which the student did not receive notice.

The expulsion statute provides in part:

120.13 School Board Powers.

(1)(c) 4. Not less than 5 days written notice of the hearing...shall be sent...The notice shall state all of the following:

a. **The specific grounds under subd. 1., 2. or 2m** and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

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*, Decision and Order No. 178, (May 17, 1991).]

The notice of expulsion and the finding of fact and conclusions of law are not based upon at least one common statutory ground; therefore, the expulsion must be reversed. See *Sabrina T. v. Menominee Indian School District Board of Education*, Decision and Order No. 468 (May 29, 2002); *Travis J. M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Justin E. v. Antigo Unified School District Board of Education*, Decision and Order No. 329 (July 24, 1997).

Finally, the record does not reflect whether a separate expulsion order was mailed to the pupil and her parent. This is also required by §120.13(1)(c)3.

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 in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District Board of Education*, Decision and Order No. 408 (February 24, 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).

This decision should not be interpreted to condone the pupil's behavior. Furthermore, the district is not precluded from beginning the expulsion process again. The district and board must, however, abide by the statutory requirements in §120.13(1)(c). This order reversing the expulsion will remain in effect unless and until the board or administration re-engage the expulsion process.

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 Melissa R by the Westfield School District Board of Education is overturned.

Dated this 10th day of September, 2002



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