

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Antone M</p> <p>by Westfield School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX26</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 October 18, 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 September 23, 2002, from the district administrator of the Westfield School District. The letter advised a hearing would be held on October 1, 2002 that could result in the pupil's expulsion from the

Westfield 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 which endangered the property, health, or safety of others and violated district policies. The letter alleged that he was “under the influence of a controlled substance as well as Wisconsin State Statute 120.13(1)(c)1.”

The hearing was held in closed session on October 1, 2002. The pupil and his parents appeared at the hearing represented by an attorney. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his 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 refused to obey school 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 October 1, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through November 11, 2002. 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 there from. *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 three issues. The pupil alleges that the expulsion was contrary to the intent of the law, the board violated its own policy by using expulsion rather than a lesser penalty and that the facts do not justify expulsion. Expulsions based upon possession of marijuana have routinely been upheld by the state superintendent. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District*, Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School*, Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District*, Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District*, Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District*, Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District*,

Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994).

However, in reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. First, the notice of expulsion is insufficient. The notice of expulsion hearing did not provide the particulars of misconduct that Antone 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. *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 merely stated that Antone was under the influence of a controlled substance. It does not say when or where this conduct allegedly occurred. This error requires reversal.

Secondly, the expulsion order finds that Antone refused to obey school rules because he was found to be under the influence of a controlled substance. This ground for expulsion is not valid. To expel a pupil for refusal to obey school rules, the violation must be repeated. See 120.13(1)(c)1. This error requires reversal.

Furthermore, the ground for expulsion that the board found was not included in the notice of hearing. 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). Therefore, the failure to provide notice of the same statutory basis as the board relied upon to order expulsion also requires reversal of the

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).

expulsion order. *Travis M. v. Deerfield Community School District Board of Education*,
Decision and Order No. 423 (September 25, 2000).

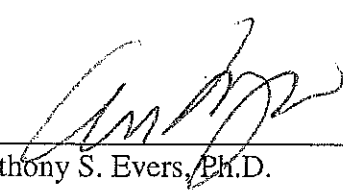
CONCLUSIONS OF LAW

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 Antone M. [redacted] by the Westfield
School District Board of Education is overturned.

Dated this 16th day of December, 2002



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