

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Ulysses R.</p> <p>by South Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 04-EX03</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 South Milwaukee School District Board of Education to expel the above-named middle school pupil from the South Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 17, 2004.

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 January 21, 2004, from the vice principal of the South Milwaukee Middle School. The letter advised a hearing would be held on January 28, 2004 that could result in the pupil's expulsion from the South Milwaukee School District. The letter was sent to the pupil's parents by certified mail. While there is a letter addressed to the pupil, there is no evidence in the record that the letter was sent to the pupil.¹ 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 that he repeatedly refused or neglected to obey school rules. The letter alleged that he sexually humiliated a classmate, while on probationary status for battery of a classmate.

The hearing was held in closed session on January 28, 2004. The pupil and his parents appeared at the hearing without counsel. 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 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 and has repeatedly refused or neglected 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 February 4, 2004, was mailed separately to the

¹ The department did ask the district to check the records in case proof of separate mailing was accidentally omitted from the record. The district did not provide any further information.

pupil and his parents. The order stated the pupil was expelled through the 2004-05 school year.

A transcript of the expulsion hearing is 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.

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).

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.** While it appears from the record that a notice of expulsion hearing was addressed to the pupil, there is no evidence in the record that the notice was sent separately to the pupil. That statute requires that the notice of expulsion hearing be sent to the pupil AND the parent. 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). Also, 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).

Placing two notices in one envelope does not meet these requirements. 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. *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001); and *Raymond K. v. Phillips School District Board of Education*, Decision and Order No. 435 (June 25, 2001). It has also been determined mailing the student's copy of the notice of hearing to the father's work address does not comply with the statute. *Isaac 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." *Isaac S. v. Milwaukee Public School District*, Decision and Order no. 187 (April 21, 1992). Finally, there are strong public policy reasons for the requirement of separate notices. Most expulsions involve

teenage students. It is common knowledge among educators and parents that privacy is an important teenage right. In many households, the parents do not open the teenager's mail and the teenager does not open the parent's mail. Thus, when two notices are placed in one envelope addressed only to the parent or the student there is no assurance that the mandatory procedural requirement of sending separate notices has been met.

In addition, the notice of expulsion hearing failed to contain the particulars of the alleged misconduct. 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. 2000.²

The notice of expulsion hearing utilized a "one-size fits all" description of the particulars of the alleged misconduct by alleging that the pupil sexually humiliated another student and that he was on probation for battery to a student. It did not include the day or location of the alleged misconduct. Furthermore, when the board made factual findings of repeated failure to obey school rules, it relied on a long list of misconduct, rather than only the misconduct alleged in the notice of expulsion. 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. *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001). 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.

If the district chooses, it may remedy this error by providing proper notice of the expulsion hearing, rehearing 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*

² 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).

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, 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 Ulysses R. by the South Milwaukee School District Board of Education is reversed.

Dated this 19th day of April, 2004.



Anthony S. Evers, Ph.D.

Deputy State Superintendent of Public Instruction