

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  Perignon Bt  by Neenah Joint School District Board of Education</p>	<p>DECISION AND ORDER  Appeal No.: 05-EX 02</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 Neenah Joint School District Board of Education to expel the above-named pupil from the Neenah Joint School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 20, 2005.

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 22, 2004, from the district administrator of the Neenah Joint School District. The letter advised a

hearing would be held on September 30, 2004 that could result in the pupil's expulsion from the Neenah Joint School District through the pupil's 21st birthday. 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, that his conduct endangered the property, health, or safety of any employee or school board member of the district, and that he repeatedly refused or neglected to obey school rules. The letter identified the board policies that were allegedly violated and that the conduct that endangered the safety of others occurred on September 16, 2004 at the high school and that the repeated rule violations occurred between September 2002 and September 21, 2004. However, the notice did not contain any specific information concerning what occurred on September 16, 2004 at the high school or any specific allegations concerning the repeated rule violations.

The parent requested that the September 30 hearing be postponed so that she could prepare for the hearing. The district agreed to the postponement and sent a new notice of hearing to the pupil and his parents on September 30, 2004 advising them of the new hearing date of October 8, 2004. Aside from the date change, this notice was identical in content to the first notice.

The hearing was held in closed session before an independent hearing officer on October 8, 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 independent hearing officer 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, that his conduct endangered the property, health, or safety of any employee or school board member of the district, and that he repeatedly refused or neglected to obey school rules. The hearing officer further found that the interests of the school demand the student's expulsion. The hearing officer issued a written decision containing the findings of fact and conclusions of law of the school board, dated October 8, 2004, and it was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday. Minutes and an audiotape of the expulsion hearing is part of the record. On October 19, 2004 the school board adopted the expulsion order as issued by the hearing officer.

#### 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 note that the notice of expulsion hearing did not contain the particulars of misconduct that led to the expulsion hearing. 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.<sup>1</sup>

The notice of expulsion hearing utilized a “one-size fits all” description of the particulars of the alleged misconduct by alleging that the pupil violated specific board policies concerning violence and threatening behavior. The description of the repeated rules violations is limited to a statement that the pupil repeated violated rules over the course of two school years. 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*. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *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. The district could have

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<sup>1</sup> 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).

easily described the misconduct it was considering or attached a memo describing the misconduct and list of previous violations of school rules, but it did not.

This error may be cured by providing proper notice of the expulsion hearing and rehearing the expulsion. In the event expulsion is ordered after the rehearing, a written order must be prepared and sent to the parent and pupil separately. 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 conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

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.

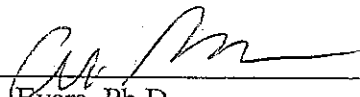
#### CONCLUSIONS OF LAW

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 Perignon B by the Neenah  
Joint School District Board of Education is reversed.

Dated this 21st day of March 2005.

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