

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>D:            S:</p> <p>by Racine School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 03</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 Racine School District Board of Education to expel the above-named pupil from the Racine School District. This appeal was filed by the pupil's guardian and received by the Department of Public Instruction on February 21, 2007.

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 17, 2007, from the principal of the Case High School. The letter advised that a hearing before an independent hearing officer would be held on January 26, 2007 that could result in the pupil's expulsion from the Racine School District through the pupil's 21st birthday and was sent to the pupil and her parent by mail in

separate envelopes. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and that she engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that "Section IV articles (F) and (I). Physical fighting on school property. Multiple/repeated acts of violence during the 06/07 school year."

The hearing was held before an independent hearing officer on February 1, 2007. Neither the pupil nor her parent/guardian appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the independent hearing officer issued findings of fact and expulsion order, concluding that the pupil, on January 16, 2007, violated

"Article IV, F&I: Behavior and Defiance. [The pupil] has been involved in multiple violent acts while at Case High School. She had just been reinstated from a suspension involving a verbal altercation with same student."

In the order addressed to the pupil, no specific grounds for expulsion were identified, however in the order addressed to the parent/guardian, it appears that someone checked a box indicating that the pupil repeatedly refused or neglected to obey school rules. The order recommended expulsion until the end of the 1<sup>st</sup> semester of the 2007-08 school year with an opportunity for early reinstatement. There is no evidence in the record whether or not the board met and approved, modified or reversed the independent hearing officer's findings. Nor is there any evidence in the record whether the board findings were sent to the pupil and parent/guardian. An audiotape 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.

The pupil's guardian filed an appeal of the expulsion order. In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. First, I note that the notice of the hearing indicated that it was to be held on January 26, 2007 but it was actually held on February 1, 2007. While the independent hearing officer makes a finding that the date change was requested by the parent/guardian, there is no documentation in the record to support this finding. Thus, there is insufficient evidence in the record to find that the pupil was given notice of the February 1 date (as opposed to the original date January 26, 2007.)

Second, when the school board uses an independent hearing officer to hear expulsion decisions, the board is required to review the expulsion order and reverse, approve or modify it within 30 days of its issuance. Wis. Stats. §120.13(1)(c)3. There is no evidence in the record that the board reviewed the expulsion order. This requires reversal.

Third, the independent hearing officer's order that was addressed to the pupil does not indicate any ground for expulsion.<sup>1</sup> The order is required to contain the grounds for expulsion. See *J.I. v.*

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<sup>1</sup> In the record submitted, the expulsion order that was addressed to the parent was a copy of the original order. However, the ink that checked a box finding grounds for expulsion was not a copy.

*Waterford Union School District*, Decision and Order No. 580 (August 22, 2006); *C. S. v. Bonduel School District*, Decision and Order 320 (April 10, 1997).

Finally, 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...

In this case, the particulars were stated as:

“Section IV articles (F) and (I). Physical fighting on school property. Multiple/repeated acts of violence during the 06/07 school year.”

The record contains no information that attachments of prior incidents were included. Thus, the reader is left to guess which incidents were being considered. Further, while one could surmise that the reference to Section IV, Articles F and I referred to a school board policy, the notice does not indicate that clearly. In addition, the findings made by the independent hearing officer refer specifically to an incident on January 16, 2007 and generally to incidents that have previously occurred while the pupil attended this particular high school, with no finding that these occurred during the 2006-07 school year as referenced in the charges.

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>2</sup>

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 she 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 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).

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<sup>2</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).

Because of these procedural violations, I am required to reverse this 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.

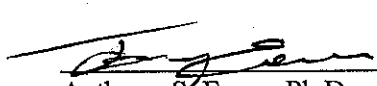
### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board with all of the procedural requirements of §120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of D. S. by the Racine School District Board of Education is reversed.

Dated this 23<sup>rd</sup> day of April, 2007.

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