

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>D :H</p> <p>by Southern Door County School District<br/>Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 19</p> |
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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(c) from the order of the Southern Door County School District Board of Education to expel the above-named pupil from the Southern Door County School District. This appeal was filed by the pupil and received by the Department of Public Instruction on September 4, 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 Wis. Stat. § 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 May 11, 2006, from the district administrator of the Southern Door County School District. The letter advised a hearing would be held on May 22, 2006 that could result in the pupil's expulsion from the Southern Door County 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. The letter specifically alleged that the pupil possessed a 6 inch lock-blade knife and exposed the knife while on the school bus.

The hearing was held in closed session on May 22, 2006. 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. 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 May 22, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the

pupil's 21st birthday with an opportunity for early readmission. Minutes of the school board expulsion hearing are part of the record.<sup>1</sup>

### 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 Wis. Stat. § 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 Wis. Stat. § 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.

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<sup>1</sup> The school board submitted an affidavit of the school principal concerning the investigation of the alleged misconduct. This affidavit was not part of the expulsion hearing record. This review is based solely on the expulsion record.

The pupil, by his attorney, raises two issues in this appeal of the expulsion order.<sup>2</sup> First, the pupil alleges that the notice of expulsion hearing was inadequate because it failed to provide a date or time frame for the alleged misconduct. The pupil alleges that this error is “highly determinative” in this case because the principal testified at the expulsion hearing that witnesses had seen the pupil possess the knife on the bus multiple times. The pupil’s parents testified at the hearing that prior to this testimony they were not aware of the allegations that the pupil possessed the knife on multiple occasions.

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, Wis. Stat. § 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.

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<sup>2</sup> The pupil also raised issues related to the re-imposition of the expulsion order after early readmission. The issues concerning re-imposition of the expulsion order are not reviewable. Wis. Stat. § 120.13(1)(h).

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>3</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 informed the pupil that he engaged in "gross misconduct during school: Possession of a 6 inch lock-blade knife and exposing the knife while on the school bus." The hearing record indicates that the pupil, a freshman at the time, had been bullied by kids at school for many years. The principal testified that on May 1, 2006 he was informed by a staff member that a student wanted to make a report about another student that had a knife on the school bus. The principal interviewed several witnesses who said that the pupil had a knife while on the school bus ride home on April 28, 2006. According to the witnesses the principal interviewed, the pupil used the knife to carve a toothpick that was found on the bus, but he never threatened any one with the knife. The principal testified that other witnesses told him that the

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<sup>3</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).

pupil had the knife<sup>4</sup> on the bus several times over the two weeks prior to April 28. The pupil was interviewed at school by the principal and admitted to possessing the knife at school and on the school bus. After the principal's testimony, the parents testified and said that they had not been aware that the pupil had possessed the knife multiple times at school.

The notice in this case fails to inform the pupil of the time frame of the alleged misconduct. Further, the record of the hearing does not clarify the issue as it references several instances of possession of the knife at school. This does not constitute adequate notice and requires reversal. *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 school board has argued that a case decided by the State Superintendent nearly a year after this pupil's expulsion hearing approves of the faulty notice in this case. In that case, *TPG v. Franklin Public School District Board of Education*, Decision and Order Number 588 (March 7, 2007), the State Superintendent stated the following in a footnote:

**"The notice of expulsion hearing must contain the particulars of misconduct. Ordinarily, the specifics contained in this notice of expulsion would be insufficient as it does not identify the date of the violations or the particulars of the "repeated" acts of rule violations. However, in this case, the notice of expulsion hearing specifically referenced a pre-expulsion meeting which addressed the same misconduct. The record contains documentation of what was discussed at the pre-expulsion meeting. Therefore, based on the totality of the record and absent any complaint regarding this from the pupil or parent, it will be found to be sufficient. I caution boards; however, that reliance on this method is not recommended and could result in the finding of a procedural violation."**

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<sup>4</sup> The knife, when completely opened was six inches long, the blade was approximately 2 ½ inches long. It looked like a typical pocket knife.

As I previously warned, reliance on extraneous factors to support a finding of adequate notice is discouraged. In this case, the extraneous factors do not exist. There was no reference in the expulsion notice to a pre-expulsion meeting. Furthermore, the record clearly indicates that even if the pupil may have known that he was accused of possessing the knife on multiple occasions, the parents had not been given notice of these allegations. Finally, the expulsion order does not specify whether the finding was made based on a single incident, and if so what day the single incident occurred, or whether it was based on several incidents.

The pupil also alleges that his conduct did not endanger others. He argues that he was not a danger to others, but rather he was in danger from other's harassment and bullying. The State Superintendent has consistently upheld expulsions based on possession of a weapon, including knives, at school. *Jesse M. K. v. Tri-county Area School District*, Decision and Order No. 266 (January 2, 1996); *Brent S. v. Mondovi School District*, Decision and Order No. 290 (May 23, 1996); *Jesse P. v. Hustiford School District*, Decision and Order No. 293 (June 10, 1996); *Michael L. v. New Richmond School District*, Decision and Order No. 326 (June 2, 1997); *James D. v. Greenfield School District*, Decision and Order No. 352A (April 7, 1998); *Stacey R. v. Milwaukee School District*, Decision and Order No. 362 (June 1, 1998). Thus, regardless of the motivation, possession of a knife at school is conduct that endangers the property, health, or safety of others at school. The motivation for the conduct may be an element considered by the board when determining whether the interests of the school district demand 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.

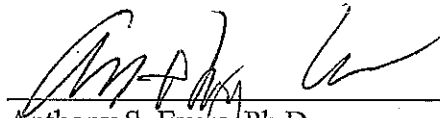
**CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of Wis. Stat. § 120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of D. H. by the Southern Door County School District Board of Education is reversed.

Dated this 5th day of November, 2007.



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