

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>R H</p> <p>by Webster School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-16</p>
--	---

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 Webster School District Board of Education to expel the above-named pupil from the Webster School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 17, 2008.

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 March 18, 2008, from a principal of the Webster School District. The letter advised a hearing would be

held on March 27, 2008 that could result in the pupil's expulsion from the Webster School District through the pupil's 21st birthday.¹ The letter was sent to the pupil by certified mail. The letter alleged that the pupil was in the possession of marijuana on school property and referred to documentation attached to the Notice of Hearing.

The hearing was held in closed session on March 27, 2008. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent were given the opportunity to present statements to the board for consideration.

After the hearing, the school board deliberated in closed session and decided to expel the student. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated March 28, 2008, was mailed to the pupil's parent. The order stated that the pupil was expelled through the end of the 1st semester of the 2008-09 school year. Minutes of the school board 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.

¹In the Notice of Hearing, it states that the pupil has the right to demand an open or closed hearing. However, while the pupil may request an open hearing, there is no statutory law that requires the board to comply with an open hearing request. The board must only comply with the pupil's request if it is that the hearing be closed.

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 requests that the expulsion be overturned. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct.

However, after reviewing the record, I find that the school district did not comply with all procedural requirements. The notice of expulsion hearing was not sent separately to the pupil

and her parent. 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 record indicates that a notice of the expulsion hearing was addressed to the pupil and mailed by certified mail to her, but there is no evidence that it was mailed, given or otherwise sent to her parent.² Section 120.13(1)(c)4. 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).

The state superintendent has routinely held that 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). Therefore, this error requires reversal.

² The department contacted the district to inquire whether it was sent separately. The district did not provide any evidence that it was.

In addition, the record is unclear whether the Notice of Expulsion Hearing contained the particulars of the alleged misconduct. The notice referenced attached documentation but did not identify what document(s) were attached.³ 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). This failure to provide the particulars of this misconduct requires reversal.

In addition school districts are required to keep written minutes of the expulsion hearing. Sec. 120.13(1)(c)3. While the minutes of the expulsion hearing indicate who was present and who spoke they do not indicate what was said, whether the pupil had an opportunity to question

³ The attached document may have been an incident report that was generated on March 18, 2008 concerning an incident that occurred on March 14, 2008 at school. However, there is no reference in either the letter or the incident report that this is in fact the "attached documentation".

or call witnesses, or what written documents were submitted to the board. As part of the record the school district included a written summary prepared by the school psychologist and the school counselor, a written incident report, and other behavioral and attendance records as well as a hand written letter signed by the pupil and a typed letter written by the pupil. However, the minutes do not reflect whether this is the same document used at the hearing or if other documents were used at the hearing. Furthermore, in this case, there was nothing else to rely upon to discern what happened at the hearing.

While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the state superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. Because the minutes submitted do not do that, they are insufficient. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996).

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. 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.

If the district chooses, it may remedy these errors 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 21, 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).

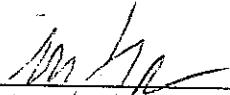
CONCLUSIONS OF LAW

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 R H by the Webster School District Board of Education is reversed.

Dated this 13th day of June, 2008.



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