

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

E. D.

by Grafton School District
Board of Education

DECISION AND ORDER

Appeal No.: 09-EX-08

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 Grafton School District Board of Education to expel the above-named pupil from the Grafton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 24, 2009.

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 November 25, 2008, from the district administrator of the Grafton School District. The letter advised a hearing

would be held on December 8, 2008 that could result in the pupil's expulsion from the Grafton School District through her 21st birthday. The letter was sent separately to the pupil and her parent. 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 alleged that the pupil is guilty of repeated refusal or neglect to obey the rules. The letter specifically alleged that the pupil failed to obey school rules and was in the possession of drug paraphernalia.

The hearing was held in closed session on December 8, 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 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 that the pupil was guilty of repeated refusal or neglect to obey the 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 December 8, 2008, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through the spring semester of the 2010-11 school year. A transcript of the expulsion hearing and exhibits introduced at the hearing are part 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 appeal letter in this alleges that the punishment of expulsion was too severe. 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. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination.

However, in reviewing the record I find that 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. 2000.¹

The notice of expulsion hearing in this case utilized a “one-size fits all” description of the particulars of the alleged misconduct by alleging that the pupil failed to obey school rules and possessed drug paraphernalia. It did not include the day or location of either allegation of misconduct. Proper notice must inform the pupil of the time frame during which both allegations of 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.

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.

¹ 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).

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).

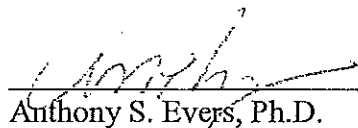
CONCLUSIONS OF LAW

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 E. . . . D. . . . by the Grafton School District Board of Education is reversed.

Dated this 21st day of April, 2009



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