

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>F T</p> <p>by Watertown School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-01</p>
--	---

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 Watertown School District Board of Education to expel the above-named pupil from the Watertown School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 4, 2010.

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 4, 2009, from the district administrator of the Watertown School District. The letter advised that a

hearing would be held on November 16, 2009 that could result in the pupil's expulsion from the Watertown School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil engaged in conduct while at school or under the supervision of a school authority which endangered the property, health, or safety of others and that the pupil is guilty of repeated refusal or neglect to obey the rules. The letter specifically alleged that the pupil had a verbal confrontation with another student on September 9, 2009 where he told the student "watch your back or I will kill you!" and that on October 15th, he told a teacher tutoring him that "if I get expelled after all of this then I'm going to do something stupid." In addition, the pupil had 20 behavioral infractions during the 2007-08 school year and 17 behavioral infractions recorded during the 2008-09 school year.

The hearing was held in closed session on November 16, 2009. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his 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 that the pupil threatened other students at school on September 9, 2009 when he had a verbal confrontation with another student when he told the other student "I'm in 3P...would you like to say that to my face...we can settle this right now...I'm going to jump you and beat the fuck out of you." The board also found that on September 18, 2009 a staff member overheard the pupil threaten another student with "Watch or back or I will kill you." The board also found that the pupil had threatened students and staff on two occasions and had 17 behavioral infractions in the 2008-09 school year and had 20 behavior infractions in the 2007-08 school year. The school

board found that the pupil engaged 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 repeatedly refused or neglected 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 November 30, 2009, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing and exhibits introduced at the hearing are 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 appeal letter in this case raises several issues which require consideration. The appeal claims that the school district did not follow state law regarding suspension procedures. The state superintendent lacks the authority to review the length of a pupil's suspension. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). Therefore, this allegation cannot be considered in the appeal.

The appeal also raises questions about the adequacy of the district's evaluation of the pupil to determine special education needs. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://dpi.wi.gov/sped/tm->

[spcedtopics.html](#). Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

Finally, the appeal questions the legitimacy of one of the pupil's alleged acts of misconduct outlined in the Notice of Expulsion Hearing. Specifically, the appeal questions the incident where on October 15, 2009, the pupil allegedly said that "if I get expelled after all of this then I'm going to do something stupid." The pupil is alleging that there are insufficient facts to support the board's decision to expel. Based upon the board's final expulsion order, it does not appear that the board made any finding that the pupil engaged in misconduct on October 15, 2009.

However, the notice of expulsion hearing did not provide the pupil with adequate notice of the allegations against him. The notice of expulsion hearing provided notice that two specific incidents would be considered: One occurred on September 9, 2009 and alleged that the pupil threatened another student with "Watch your back or I will kill you". A second occurred on October 15, 2009 and alleged that the pupil told a staff member that "if I get expelled after all of this then I'm going to do something stupid." The notice also informed the pupil that the board would consider his twenty behavior infractions from the 2007-08 school year and seventeen behavior infractions from the 2008-09 school year; however it did not specify any particular misconduct during those two years. This notice would have been sufficient if the misconduct actually considered by the board was described in the notice. However, the final expulsion order made specific findings of misconduct that were not included in the notice. First, the board found that the misconduct that was alleged to have occurred on September 9, 2009 actually occurred on September 18, 2009 ("Watch your back or I'll kill you"). The pupil was given no notice that conduct from September 18, 2009 would be considered. Second, the board found that on

September 9, 2009 the pupil had a verbal confrontation with another student and told the other student "I'm in 3P...would you like to say that to my face...we can settle this right now...I'm going to jump you and beat the fuck out of you." While the pupil was provided notice of misconduct alleged to have occurred on September 9, it was not this misconduct. Third, the board made specific findings of two other incidents of misconduct from the 2008-09 school year that were not included in the notice of expulsion. The pupil was only provided notice that his history of seventeen behavioral infractions in 2008-09 would be considered.

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). 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. The expulsion statute provides in part:

120.13 School Board Powers.

(1) (c) 4. Not less than 5 days written notice of the hearing...shall be sent...The notice shall state all of the following:

a. The specific grounds under subd. 1., 2. or 2m and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

Expulsions have been repeatedly overturned for failure to include this in the notice. Even where a pupil unequivocally admits misconduct that is grounds for expulsion, the failure to provide the mandated, advance statutory notice calls for reversal. See *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Justin E. v. Antigo School District Board of Education*, Decision and Order No. 329 (July 24, 1997); *Ryan G. v.*

Sparta Area School District, Decision and Order No. 325 (May 19, 1997); *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178 (May 17, 1991); *Christopher K. v. West Allis School District*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District*, Decision and Order No. 143 (July 2, 1986). The failure to accurately describe the alleged misconduct in this case is an error that requires reversal. *Randy H. v. Central/Westosha School District Board of Education*, Decision and Order No. 204 (April 6, 1993).

The school district is required to provide the pupil advance notice of the particulars of the misconduct under which it intends to proceed. It cannot make its finding based upon a different act of misconduct for which the student did not receive notice. Because the factual conclusions of the board concerning the pupil's misconduct differed from the allegations contained in the notice of the expulsion hearing, the school board did not give adequate notice to the pupil about the charges that would be considered at this expulsion hearing and the expulsion must be reversed. See *Benjamin Z. v. Marinette School District Board of Education*, Decision and Order number 507 (March 1, 2004); *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 19, 2004); and *Justin B. v. Central Westosha High School District Board of Education*, Decision and Order Number 494 (May 8, 2003).

This decision in no way condones the pupil's conduct or suggests that expulsion is not appropriate. However, because the procedural mandates were not strictly complied with, I am compelled to reverse the expulsion order.

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 F T by the Watertown School District Board of Education is reversed.

Dated this 4th day of March, 2010



Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction