

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A      B.</p> <p>by Milwaukee Academy of Science Charter School</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 12-EX-06</p>
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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. §§ 119.25 and 120.13(1)(c) from the order of the Milwaukee Academy of Science Charter Discipline Review Board to expel the above-named pupil from the Milwaukee Academy of Science Charter School. This appeal was filed by the pupil and received by the Department of Public Instruction on May 21, 2012.

In accordance with the provisions of Wis. Admin. Code Ch. PI § 1.04(5), this Decision and Order is confined to a review of the record of the discipline review board hearing. The state superintendent's review authority is specified in §§ 119.25 and 120.13(1)(c). The state superintendent's role is to ensure that the required statutory procedures were followed, that the discipline review board's decision was based upon one or more of the established statutory grounds, and that the discipline review board was satisfied that the interest of the school demands that the student be expelled.

## **FINDINGS OF FACT**

The record contains a letter regarding a "Notice of Expulsion Hearing," dated April 27, 2012, from the associate principal of the Milwaukee Academy of Science. The letter advised that a hearing would be held on May 2, 2012 that could result in the pupil's expulsion from the Milwaukee Academy of Science for a period of time to be determined by the discipline review board. The letter alleged that the pupil was guilty of repeated rule violations. The letter specifically alleged that the expulsion consideration was based upon the pupil's alleged acts which include assault/fighting on April 25, 2012.

The hearing was held on May 2, 2012. There is no indication in the Charter Discipline Review Board Hearing Minutes if the hearing was open or closed. The pupil and her parents appeared at the hearing without counsel. At the hearing, the Milwaukee Academy of Science school administration presented evidence concerning the grounds for expulsion. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the discipline review board deliberated and found that 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 discipline review board further found that the interests of the school demanded the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the discipline review board, dated May 8, 2012, was mailed separately to the pupil and her parents. The order stated that the pupil was expelled through August 13, 2012. Minutes of the discipline review board expulsion hearing, the April 27, 2012 notice of expulsion hearing, and the May 8, 2012 Findings of Fact and Expulsion Order constitute the record in this case.

## DISCUSSION

The school at issue in this case, the Milwaukee Academy of Science, is an independent charter school under Wis. Stat. § 118.40(2r) authorized by the City of Milwaukee and is considered a public school. According to the Milwaukee Academy of Science's Disciplinary Review Process, which is attached to the School's contract with the City of Milwaukee, the student and family may appeal an expulsion to the State Superintendent. The state superintendent is using the same procedure and relying on the same body of law that he uses in reviewing expulsions of non-charter public schools.

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), 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 *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 demand the pupil's expulsion.

The appeal letter in this case raises several issues which require consideration. The appeal, filed by the pupil's mother, claims the discipline review board did not provide her with any paperwork regarding the pupil's suspension that was in effect pending an expulsion hearing. The state superintendent lacks the authority to review 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 issue will not be addressed in this order.

The appeal also claims that the school administration did not provide the pupil with the statutory requirement of five days notice of the expulsion hearing. Included in the record in this case is a document titled "Milwaukee Academy of Science Charter Discipline Review Board Hearing Minutes" which reflects who was present at the hearing and summarizes testimony taken during the hearing. The minutes indicate that both the pupil and her parents attended the hearing. There was no testimony reflected in the minutes that indicates the pupil and her parents raised the issue of not receiving five day's notice of the expulsion hearing to the disciplinary committee. Furthermore, the Findings of Fact and Expulsion Order in this matter indicate that the pupil and her mother declined the right to receive five days' notice of the expulsion hearing in order to expedite the meeting. Therefore, I find the allegation to be wholly without merit.

In addition, the pupil's mother also claims that expulsion is too harsh a punishment in response to the pupil's misconduct. The review 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 board's determination. *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 appeal also alleges that the discipline review board's decision to expel the pupil was biased. The law presumes that board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). In this case, I find the pupil's mere assertion of bias or conflict insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130 (May 10, 1985); *B. B. v. Peshtigo School District Board of Education*, Decision & Order No. 660 (May 13, 2010); *B. H. v. Boyceville School District Board of Education*, Decision & Order No. 650 (September 2, 2009).

Finally, the pupil's mother claims that the discipline review board edited testimony taken at the expulsion hearing from the Charter Discipline Review Board Hearing Minutes. However, the pupil's mother does not state what testimony was edited. I cannot accept as true general, non-specific allegation of bias.

However, after reviewing the record in this case, I find that the Milwaukee Academy of Science school administration did not follow certain procedural requirements regarding pupil expulsion. The record in this case includes an April 27, 2012 letter notifying the pupil of the May 2, 2012 expulsion hearing. The letter describes the pupil's misconduct as being "04/25/2012: Assault/Fighting." Wisconsin Stat. § 120.13(1)(c)4 requires notice of the specific

grounds for expulsion **and** the particulars of the alleged misconduct. Expulsions have repeatedly been overturned for failure to include this information 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*<sup>®</sup> *Dictionary of the English Language*: Fourth Edition. 2000.<sup>1</sup>

The notice of expulsion hearing in this case contained a “one-size fits all” description of the alleged misconduct by alleging only that the pupil participated in assault/fighting on April 25, 2012. It did not include the location or a detailed description of the alleged assault/fighting. Proper notice must inform the pupil where the misconduct occurred and a description of the conduct to be considered in an expulsion determination. *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 contains an overly broad statement that does not adequately apprise the

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<sup>1</sup>This dictionary defines “particular” as follows: 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 of what will be considered at an expulsion hearing. This notice of expulsion hearing does not constitute adequate notice and requires reversal of the expulsion order.

The April 27, 2012 notice of expulsion hearing was statutorily inadequate for several other reasons. Among other things, Wis. Stat. § 120.13(1)(c)4 states the notice of hearing shall state the time and place of the hearing; notify the pupil and his or her parent(s) that they may be represented by counsel; and, notify the pupil and his or her parent(s) that they have the right to request that the hearing be closed. In this case, the notice failed to include any of this information.

In addition, the statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, **and must be reflected in the ultimate findings of the board.** *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 21, 1993) and *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, (May 17, 1991). The April 27, 2012 notice of expulsion hearing in this case informed the pupil that the grounds for the expulsion recommendation were repeated rule violations. However, after the expulsion hearing, the discipline review board state its ground for expulsion was that the pupil engaged in conduct while at school that endangered the property, health, or safety of others at school.

Because the notice of expulsion and the findings of fact and conclusions of law in the expulsion order are not based upon at least one common statutory ground, the expulsion must be reversed. See *Melissa R. v. Westfield School District Board of Education*, Decision and Order No. 479 (September 10, 2002); *Sabrina T. v. Menominee Indian School District Board of Education*, Decision and Order No. 468 (May 29, 2002); and *Travis M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000).

If the discipline review board chooses, it may remedy the errors described above by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision.<sup>2</sup> 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). 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.

#### CONCLUSION OF LAW

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

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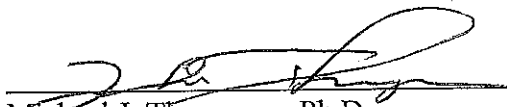
<sup>2</sup>To assist school districts, the department developed standard notice of hearing and expulsion order forms as well as a checklist that a school board may customize for its own use. These forms are available on the department's website at <http://www.dpi.wi.gov/sspw/compulatnd.html>.



**ORDER**

IT IS THEREFORE ORDERED that the expulsion of A . . . B . . . by the Milwaukee Academy of Science is overturned.

Dated this 18<sup>th</sup> day of June, 2012

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