

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>C M</p> <p>by Pulaski Community School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 12-EX-10</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 Pulaski Community School District Board of Education to expel the above-named pupil from the Pulaski Community School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 6, 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 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 October 18, 2012, from the district administrator of the Pulaski Community School District. The letter

advised that a hearing would be held on October 30, 2012 that could result in the pupil's expulsion from the Pulaski Community 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 on October 12, 2012, the pupil was in possession of marijuana and that this was the second violation of the Policy.

The hearing was held in closed session on October 30, 2012. 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 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 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 2, 2012, stated the pupil was expelled through the pupil's 21st birthday. Minutes of the school board 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 two issues which require consideration. The first issue raised in the pupil's appeal alleges that the school district did not mail separate copies of the expulsion order to the pupil and his parents. Wisconsin Stat. § 120.13(1)c requires "[t]hat if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil, and if the pupil is a minor, to the pupil's parent or guardian." No date by which this requirement must be met is included in the statute. The brief filed on behalf of the school district claims that the school board's secretary met this requirement on the date the Expulsion Order was signed, November 2, 2012. However, there is nothing in the record to

support this assertion. Nonetheless, on November 13, 2012, a record of the expulsion proceeding, which included the Findings of Fact, Conclusions of Law and Order expelling the pupil until age 21, was mailed to the department and complete copies were provided to the pupil and his parent. Therefore, the district met this requirement in mailing the expulsion order to the pupil and his parent.

The second issue raised in the pupil's appeal alleges the district's October 18, 2012 Notice of Expulsion Hearing (Notice) provided to the pupil was inadequate because it failed to identify the particulars of the pupil's alleged misconduct.

Pursuant to Wis. Stat. § 120.13(1)c; 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.<sup>1</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 brief filed on behalf of the school district claims that the requirement of including the particulars of the alleged misconduct was met because the Notice informed the pupil that a hearing would be held to determine whether the pupil has engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The district's brief also argues that the Notice meets statutory procedural requirements because it also states that "[t]he allegation of misconduct was specifically stated that '[the pupil] was in possession of marijuana.'"

While the grounds for expulsion outlined in the Notice state that the pupil "engaged in conduct while at school . . .", the particulars included in the Notice only state that on October 12,

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<sup>1</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).

2012, [the pupil] was in possession of marijuana. This is the second violation of the Policy.” Wisconsin Stat. § 120.13(1)c requires school districts to provide notice to pupils being considered for expulsion which, among other things, includes grounds for expulsion and particulars of alleged misconduct. These are two separate statutory requirements. The grounds do inform the pupil that the alleged misconduct occurred while on school grounds or while under the supervision of school authority. Thus, the misconduct could have occurred in one of two places. The pupil was entitled to know at which location the district alleged the misconduct occurred.

In addition, the “particulars” of the pupil’s alleged misconduct outlined in the Notice states that “[t]his is the second violation of the Policy.” However, there are no details about the first violation although it is included as a “Findings of Fact” in the Findings of Fact, Conclusions of Law and Order dated November 2, 2012, which expels the pupil until age 21. The district’s October 18, 2012 Notice would have been sufficient if the particulars of the alleged October 12, 2012 incident were included and if the first violation of board policy that was considered by the board was described in the October 18, 2012 Notice. However, the final expulsion order made specific findings of misconduct that were not included in the notice. Among other things, the board found that “[o]n October 12, 2012 [the pupil] possessed marijuana on school premises” and that “[t]he October 12, 2012 violation by [the pupil] was a second violation of Board Policy Code . . . due to a proven first violation of said Code on November 11, 2011.” The pupil was given no notice that conduct from November 11, 2011 would be considered.

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 an act of misconduct for which the student did not receive notice. Because the October 18, 2012 Notice

failed to include the particulars of the alleged misconduct, 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).

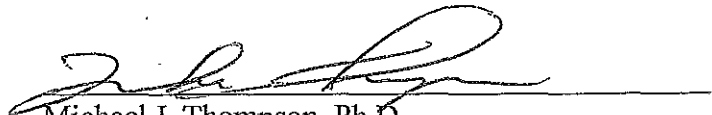
### CONCLUSIONS OF LAW

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 C. M. by the Pulaski Community School District Board of Education is reversed.

Dated this 5<sup>th</sup> day of December, 2012

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