

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T [REDACTED] D [REDACTED]</p> <p>by Menasha Joint School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 13-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. § 120.13(1)(c) from the order of the Menasha Joint School District Board of Education to expel the above-named pupil from the Menasha Joint School District. This appeal was filed on behalf of the pupil by his parents and received by the Department of Public Instruction on October 28, 2013.

In accordance with the provisions of Wis. Admin. 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 Wis. Stat. § 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 September 25, 2013, from the district administrator of the Menasha Joint School District. The letter advised that a hearing would be held on October 8, 2013, that could result in the pupil's expulsion from the Menasha Joint School District through the student's 21st birthday. The letter was personally served on the pupil and his father. The notice was also sent separately to the pupil and his father by regular mail. The letter alleged that the pupil "(1) engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others and/or (2) endangered the property, health or safety of a school authority or endangered the property, health or safety of any employee or school board member of the school district." The letter specifically alleged that the pupil had a "substance violation" on September 18, 2013. No details of the conduct were provided.

The hearing was held in closed session on October 8, 2013. The pupil and his parents did not appear at the hearing. At the beginning of the audiotape recording of the hearing, an individual states:¹

I want to note that the family is not here yet. There has been some information, as I understand it, to suggest that they may not attend. Is that correct? At least there is that possibility. We don't know for sure. We haven't heard. What I recommend is that we go off the record for at least five minutes or so to give them the opportunity if they are running late.

After waiting approximately five minutes, the school district administration presented evidence concerning the grounds for expulsion. There was no further discussion of the parents' and pupil's absence from the hearing. Nor was there any indication of what information school administrators had that indicated that the pupil and the parents would not be in attendance.

¹ The school district submitted an audiotape recording of the hearing. Unfortunately, numerous parts of the audiotape recording are difficult to hear. I strongly encourage the school district to take steps to ensure a better record of future hearings.

After the hearing, the school board deliberated in closed session with the assistance of counsel. The school 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 also found that the pupil "endangered the property, health or safety of a school authority or endangered the property, health or safety of any employee or school board member of the school." Specifically, the school board found that the pupil "was in possession of and offered to sell a controlled substance to other students while at school." The school board further found that the interests of the school demanded the student's expulsion. The order for expulsion containing the school board's findings of fact and conclusions of law, dated October 14, 2013, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through first semester of the 2014-15 school year. Minutes of the school board expulsion hearing and an audiotape record of the expulsion 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 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. The procedures are primarily concerned with ensuring due process, including providing the pupil and the pupil's parents with proper notice.

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). 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 one issue. Specifically, the pupil's parent alleges that prior to the expulsion hearing, school district administrators misled the parents by informing them that the pupil would not be expelled if the parents withdrew the pupil from the school district. Specifically, the parent alleged:

Lori from the district office contacted me at work prior to this hearing and told me if we just withdrew [the pupil] from their school he would not get expelled...I spoke with Mr. Rick Grable he also confirmed that to be true. [The pupil's father] was also in contact with the school after we received the letter of the hearing and was told the same thing by both the previous parties I mentioned and also Mr. Haase.

After reviewing the entire record and written submissions in this case, I must reverse the school district's expulsion decision based on the school board's failure to follow Wis. Stat. § 120.13(c)4.a.

I. The school board's notice was inadequate

Having received an appeal, the state superintendent is obligated to review the record of the expulsion proceeding for compliance with Wis. Stat. § 120.13(c). *See David N. by the Milton*

School Dist., (475) July 26, 2002 (Even though appeal letter raises no issues, state superintendent is obligated to review the expulsion record). After reviewing the entire record, it is apparent that the notice provided to the pupil and the pupil's parents was inadequate.

Pursuant to Wis. Stat. § 120.13(c)4.a., an expulsion notice must state the "specific grounds...and *the particulars* of the pupil's alleged conduct upon which the expulsion is based." (Emphasis added) The state superintendent has consistently held that a "one size fits all" description of the particulars may be inadequate. See e.g., *Ryan C. K. by the Pewaukee School Dist. Bd. of Education*, (439) July 24, 2001; *Ryan S. by the Pewaukee School Dist.*, (445) Sept. 25, 2001. Similarly, generalized statements of behavior do not meet the statutory requirements. *Nicole R. by the Arcadia School Dist.*, (480) Nov. 20, 2002. Rather, 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. *Ryan C. K. by the Pewaukee School Dist. Bd. of Education*, (439) July 24, 2001; *Ryan S. by the Pewaukee School Dist.*, (445) Sept. 25, 2001; *Ulysses R. by the South Milwaukee School Dist.*, (509) April 19, 2004. This entails providing detailed information about the conduct, not simple generalizations. *Eric Paul H. by Mischicot School Dist. Bd. of Education*, (459) March 11, 2002; *Joseph S. by Oconomowoc Area School Dist.*, (478) Sept. 14, 2002; *Antone M. by Westfield School Dist.*, (481) Dec. 16, 2002.

The state superintendent has also consistently held that a school board may not consider allegations of misconduct if the misconduct is not specified in the notice of the expulsion hearing. *Paul K. by the Flambeau School Dist.*, (171) July 22, 1990; *Joseph F. by the Almond-Bancroft School Dist.*, (1991). The specificity requirement of Wis. Stat. § 120.13(c)4.a applies even if the pupil unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262 (E.D. Wis. 1974); *Michaelene J. by the Washington Island School Dist.*, (161) May 17, 1989);

Shane M. B. by the Green Bay Area Public School Dist., (190) April 21, 1992. In addition, because the notice requirements of Wis. Stat. § 120.13(c) are mandatory, failure to comply with the statute requires reversal of an expulsion order. *O. S. by the Racine Unified School Dist.*, (548) June 27, 2005; *S. S. by the West Allis School Dist.*, (559) Oct. 7, 2005; *S. P. by the Watertown School Dist.*, (560) December 20, 2005.

The notice provided to the pupil and the pupil's parents was inadequate. While the notice does provide the statutory grounds for the expulsion, it does not provide the particulars of the underlying conduct. The notice states, "More specifically, it is the Administration's position that T [REDACTED] D [REDACTED] has been involved in the incidents listed and attached hereto and made a part hereof as Exhibit 1." Exhibit 1 simply repeats the statutory grounds for expulsion, provides a date for the conduct ("9/18/13"), describes the conduct as "substance violation," and lists the "action" as "out-of-school suspension pending possible expulsion." No details of the alleged conduct are provided. As mentioned above, generalizations and one size fits all descriptions do not satisfy the requirements of Wis. Stat. § 120.13(c)4.a.

The school board did not provide adequate notice of the particulars, as required by Wis. Stat. § 120.13(c)4.a. Therefore, I must reverse the school board's decision.²

II. Pre-expulsion Communications

The appellant also raises the issue of whether school district administrators misled the appellant by stating that the expulsion hearing would not occur if the pupil withdrew from school. The school board argues that the appeal should be denied because the school board

² A copy of a model expulsion notice is available on the department's website at http://ssp.wi.gov/ssp_disciplineexpulsion.

complied with all of the procedural requirements of Wis. Stat. § 120.13(1)(c) and that the appellant's allegations are beyond the scope of the state superintendent's review.

Having determined that the school district failed to comply with the specific notice requirements of Wis. Stat. § 120.13(c), it is unnecessary to determine whether the appellant's allegation is within the state superintendent's scope of review and, if so, whether the pupil was denied proper notice due to the alleged conduct. Nevertheless, if the allegation is true, the conduct would raise troubling issues about whether school administrators violated the pupil's right to due process. As such, I respectfully remind the school board about the problematic nature of "withdraw or expel" agreements. In addition to creating a false sense of hope in pupils facing the dire consequences of expulsion, these agreements can simply "pass-the-buck" to other school districts that later admit pupils who should have been expelled for engaging in behavior that endangers other pupils. *See Alexander P. by the Oak Creek Franklin School Dist., (372) Nov. 23, 1998.*


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 Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T [REDACTED] D [REDACTED] by the Menasha Joint School District Board of Education is reversed.

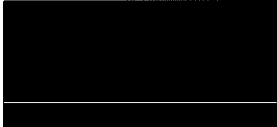
Dated this 12th day of December, 2013


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

APPEAL RIGHTS:

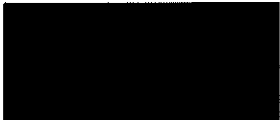
Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

PARTIES TO THIS APPEAL ARE:



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