

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

N [REDACTED] R [REDACTED]

by the Rhinelander School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-08

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 Rhinelander School District Board of Education to expel the above-named pupil from the Rhinelander School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 7, 2018.

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 § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter providing notice of an expulsion hearing, dated March 13, 2018, from the superintendent of the Rhinelander School District. The letter advised that a hearing would be held on March 19, 2018, which could result in the pupil's expulsion from the Rhinelander School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged the pupil engaged in repeated refusal or neglect to obey school

rules; engaged in conduct while at school or while under the supervision of school authority which endangered the property, health, or safety of others; and 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 “made threats which endangered the property, health or safety of school employees, students, or others at school.”

On March 14, 2018, the superintendent of the Rhinelander School District sent a supplementary notice to the pupil and his parents separately and by certified mail. That notice specifically alleged that: the pupil could be charged with a Class I felony; on January 31, 2018, during transportation to a co-curricular activity, the pupil and another student exchanged text messages that included the names of two students the pupils planned to shoot “to start Columbine 2.0”; the pupil inappropriately used technology while at school or during school-sponsored activities; and that the pupil engaged in “Category II” offenses as defined in the Rhinelander High School student handbook.

The hearing was held in closed session on March 19, 2018. The pupil and his parents appeared at the hearing without counsel. At the hearing, minutes of the expulsion hearing state the school district administration presented evidence concerning the grounds for expulsion, including testimony by law enforcement regarding the pupil’s use of electronic communications. The minutes state the pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. The minutes do not provide any substantive description of evidence presented to the school board.

After the hearing, the school board deliberated in closed session. The board found the pupil “engaged in neglect to obey school rules” and “engaged in conduct while at school or while

under the supervision of a school authority which endangered the property, health, or safety of others at school.” Specifically, the school board found the pupil exchanged text messages discussing plans to “start Columbine 2.0,” inappropriately and repeatedly used technology while at school or during school-sponsored activities, and engaged in Category II offenses as stated in the Rhinelander High School student handbook.

The order for expulsion, dated March 20, 2018, contains the school board’s findings of fact and conclusions of law. According to the order, the school board made its decision “after weighing the interest of [the pupil], as well as those of his fellow students, staff, and other individuals.” The order stated the pupil was expelled through age 21, with the opportunity for early reinstatement prior to the 2018-2019 school year. Minutes of the school board expulsion hearing and documents submitted at the hearing are part of the record.

DISCUSSION

The expulsion statute – Wis. Stat. § 120.13(1)(c) – gives school boards the authority to expel a student when specific substantive standards are met and specific procedures have been followed. *Madison Metro. Sch. Dist. v. Burmaster*, 2006 WI App. 17, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent must ensure, among other things, 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 interest of the school district demands the pupil’s expulsion.

The appeal raises several issues which require consideration. First, the appeal argues the hearing notice was not timely and did not provide sufficient notice of the evidence that would be presented against the pupil at the hearing. Regarding the timeliness of the notice, Wis. Stat. § 120.13(1)(c) requires notice of hearing be sent to the pupil and the pupil’s parents not less than 5

days prior to the hearing. The word “days” as used by Wis. Stat. § 120.13(1)(c) is in reference to calendar days, not school days. *See Derek D. by Flambeau Sch. Dist.*, (451) Jan. 28, 2002; *Daniel C. by Whitewater Sch. Dist.*, (503) Dec. 19, 2003. In calculating the time for notice of the expulsion hearing, the date the notice is sent is excluded from the count of days, but the date of the hearing is included, as are weekends. *Brian C. by Sheboygan Area Sch. Dist.*, (158) Sept. 9, 1988; *Lori P. by Cudahy Sch. Dist.*, (169) May 21, 1990. Therefore, the initial and supplementary hearing notices were both timely.

Regarding the content of the notice, however, the notice failed to sufficiently describe the alleged misconduct. Proper notice must inform the pupil of the timeframe during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *L.W. by the Iowa-Grant School Dist.*, (720) August 19, 2014. The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *M.S. by the Milwaukee Public School Dist.*, (675) December 21, 2010.

The notice in this matter is inadequate in regard to the allegation that the pupil “inappropriately used technology while at school or during school-sponsored activities.” The allegation actually presented during the hearing was that between January and February of 2018, the pupil accessed several pornographic and adult websites using district technology. The pupil and the pupil’s family had no way of preparing a challenge to these allegations, because the family learned of the allegations for the first time at the hearing.

The school district asserts the pupil had sufficient time and opportunity at the hearing to respond to the allegations, and that any deficiency in the hearing notice did not result in any prejudicial effect. However, the degree to which the deficient notice affected the pupil’s ability to respond to the allegations against him is impossible to determine, because the written minutes

kept by the school board are insufficient to allow for a meaningful review of this issue. The minutes merely state evidence was presented to the school board, but the minutes do not give any indication of what that evidence was or for what purpose the evidence was presented. *See Douglas G. by New London Sch. Dist.*, (228) Apr. 29, 1994; *Alfred L. by Oconto Fall Sch. Dist.*, (338) Sept. 24, 1997.

In other words, the record indicates the pupil was not provided sufficient notice of the allegations presented against him. The appeal asserts this deficiency denied the pupil due process, and the scant minutes do nothing to rebut this assertion. Therefore, I must find the school board failed to comply with the requirements of Wis. Stat. § 120.13(1)(c), and this expulsion must be reversed. *See Nathan W. by Wilmot Union High Sch. Dist.*, (296) July 10, 1996; *Phoua X. by St. Francis Sch. Dist.*, (465) Apr. 28, 2002.

Furthermore, school boards only have authority to expel a pupil if the school board determines the pupil engaged in misconduct which meets one or more statutory grounds for expulsion, and additionally determines the interest of the school demands expulsion. Wis. Stat. § 120.13(1)(c). The hearing record does not contain any indication the school board determined the interest of the school demands expulsion. The school board's order does include a statement that the school board weighed the competing interests of the pupil and his fellow students, staff, and other individuals, but this is insufficient to authorize the expulsion of a pupil. The statute requires more than a cursory consideration of relevant interests or alternative courses of action. The school board must be satisfied that, given the nature of the pupil's misconduct, the interests of the school require that the pupil be expelled.

A school board does have wide discretion to determine the interests of the school and whether those interests demand expulsion in any given case. However, making this

determination remains necessary as a statutory requirement of Wis. Stat. § 120.13(1)(c).

Including this determination as part of the written hearing record demonstrates on appeal that the decision to expel a pupil from school was given serious and thoughtful consideration beyond whether the pupil engaged in alleged misconduct. *See D.S. by Cedar Grove-Belgium Area Sch. Dist.*, (552) July 11, 2005. *G.J. by Medford Area Sch. Dist.*, (683) May 17, 2011. *T.S. by West Allis-West Milwaukee Sch. Dist.*, (684) May 20, 2011. *Z.L. by Janesville Sch. Dist.*, (694) Apr. 4, 2012. The hearing record in this case does not document that the school board was satisfied that the interest of the school demands the pupil's expulsion, and therefore this expulsion must be reversed on this additional basis. *Russell B. by Muskego-Norway Sch. Dist.*, (175) Feb. 28, 1991; *Jennifer L. by Siren Sch. Dist.*, (177) May 14, 1991.

In regard to the remaining issues raised on appeal, the appeal argues the hearing notice failed to provide effective notice of the right to counsel, because the hearing notice did not mention this until the second page of the notice. The school board satisfied this procedural requirement by referencing the right to counsel in the hearing notice. Wis. Stat. § 120.13(1)(c)(4)(e).

Finally, the appeal argues the school district failed to evaluate the pupil for a possible disability. With limited exceptions, an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular student. *R.M. by the Oak Creek-Franklin Joint School Dist.*, (711) January 30, 2014. Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. *S.R. by the Chippewa Falls Area Unified School Dist.*, (723) February 25, 2015. Here, there is no evidence in the record that the pupil was identified as a child with a disability.

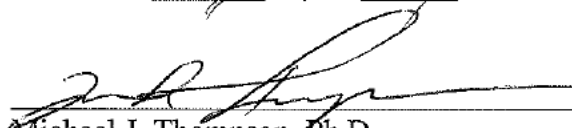
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of N [REDACTED] R [REDACTED] by the Rhineland School District Board of Education is overturned.

Dated this 24th day of July, 2018



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

Parties to this appeal are:

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[REDACTED]

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APPEAL RIGHTS

Wis. Stats. § 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 § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:

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