

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>N [REDACTED] Z [REDACTED]</p> <p>by Union Grove Union High School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-11</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 Union Grove Union High School District Board of Education to expel the above-named pupil from the Union Grove Union High School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 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 Wis. Stat. § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Pupil Expulsion Hearing," dated March 7, 2018, from the district administrator of the Union Grove Union High School District. The letter advised that a hearing would be held on March 12, 2018, that could result in the pupil's expulsion from the Union Grove Union High 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 the following:

On or about February 26, 2018, [the pupil] knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made to endanger the property, health, or safety of others at school.

On March 9, 2018, the pupil's parent met with the Union Grove Union High School District's district administrator, at which time the district administrator provided a revised "Notice of Pupil Expulsion Hearing," which alleged the following:

On or about February 26, 2018, [the pupil] knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made to endanger the property, health, or safety of others at school. In class on that date, he threatened other students he would "shoot up the school."

The hearing was held in closed session on March 12, 2018. 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 decided to expel the pupil until his 21st birthday. The order of expulsion containing findings of fact and conclusions of the school board was dated March 12, 2018 (the Order). The conclusion of the board, as set forth in the Order, was that the pupil was guilty of "engaging in conduct which endangered the property, health or safety of others at school within the meaning of Wisconsin Statutes Section 120.13(1)(c)." The school board further found that the interests of the school demand the student's expulsion. Minutes of the school board expulsion hearing and an audio recording of the expulsion 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 demand the pupil's expulsion.

The appeal letter in this case asserts that the school district failed to provide a timely and sufficient hearing notice to the pupil and the pupil's parents, as required by Wis. Stat. § 120.13(1)(c)4. The expulsion statute requires notice of the specific grounds for expulsion and the particulars of the alleged misconduct. *Id.* Notice requirements are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. *See O.H. by Milwaukee Public Sch. Dist.*, (573) May 8, 2006; *Nick N. v. Elcho Sch. Dist.*, (373) December 4, 1998; *Justin E. v. Antigo Sch. Dist.*, (329) July 24, 1997. The articulated statutory grounds for expulsion under Wis. Stat. § 120.13(1)(c)1. are as follows:

The school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules, or finds that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives, or finds 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, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion. In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

In both the original and revised Notice of Pupil Expulsion Hearing, the school district asserts as statutory grounds for expulsion that the pupil "knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made to endanger the property, health, or safety of others at school." This construction borrows elements

from several separate grounds for expulsion, but is not itself one of the explicit grounds for expulsion articulated by Wis. Stat. § 120.13(1)(c)1.

Furthermore, the notice of expulsion and order of expulsion must be based on at least one common statutory ground. *See O.H. by Milwaukee Public Sch. Dist.*, (573) May 8, 2006; *Antone M. by Sch. Westfield Dist.*, (481) Dec. 16, 2002; *Melissa R. by Westfield Sch. Dist.*, (479) Sept. 10, 2002; *Sabrina T. v. Menominee Indian Sch. Dist.*, (468) May 29, 2002. In its Order, the school board concludes that the pupil was guilty of “engaging in conduct which endangered the property, health or safety of others at school within the meaning of Wisconsin Statutes, Section 120.13(1)(c).” This conclusion does not align with the claimed statutory grounds included in the Notice of Pupil Expulsion Hearing, and again, does not state one of the explicit statutory grounds for expulsion set forth by Wis. Stat. § 120.13(1)(c)1.

Beyond the requirement that the notice of expulsion state the statutory grounds for expulsion, the notice of expulsion hearing must be sent not less than five days prior to the expulsion hearing. Wis. Stat. § 120.13(1)(c)4. The notice must be sent to the pupil and, if the pupil is a minor, to the pupil’s parent or guardian. *Id.* In this matter, the district timely sent its original Notice of Pupil Expulsion Hearing, but that notice failed to state the particulars of the pupil’s alleged conduct. *See L.W. by Iowa-Grant Sch. Dist.*, (720) Aug. 19, 2014; *N.P. by Wisconsin Dells Sch. Dist.*, (719) June 23, 2014; *A.B. by Milwaukee Acad. of Sci. Charter Sch.*, (697) June 18, 2012; *Ulysses R. by South Milwaukee Sch. Dist.*, (509) Apr. 19, 2004. The district’s revised Notice of Pupil Expulsion Hearing did include particulars of the pupil’s alleged conduct, but the evidence in the hearing record indicates only one copy of this revised notice was provided to the pupil’s parent, and the revised notice was provided less than the statutorily required five days before the hearing.

See N.P. by Watertown Sch. Dist., (569) Mar. 13, 2006; *S.P. by Watertown Sch. Dist.*, (560) Dec. 20, 2005.

On balance, there is no question that the district failed to provide an expulsion notice in compliance with Wis. Stat. § 120.13(1)(c)4. Acknowledging this deficiency, the district asserts that the pupil and the pupil's parents knowingly and intelligently waived any deficiency in the procedural notice by their conduct. At the hearing, the presiding officer asked, "[a]re all parties agreed that there were no procedural issues in this matter?" The pupil and the pupil's parents stated their agreement. However, this response does not constitute a knowing and intelligent waiver. The claimed waiver does not identify the procedural issues the pupil and the pupil's parents intended to waive, which would need to have identified both the failure to state statutory grounds for expulsion and the failure to timely provide notice of the expulsion hearing. Furthermore, the pupil and the pupil's parents did not communicate that they were waiving their right to postpone the hearing due to the deficient notice. *Cf. Curtis O. by St. Croix Central Sch. Dist.*, (489) April 17, 2003 (pupil and pupil's guardians declined school district's offer to reschedule expulsion hearing after issuing proper notice, and issue was waived for appeal).

Based upon my review of the record in this case and the findings set out above I find that the school district failed to provide sufficient notice of the expulsion hearing, and that the pupil and the pupil's parents did not waive this deficiency. I, therefore, overturn this expulsion.

CONCLUSIONS OF LAW

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] Z [REDACTED] by the Union Grove School District Board of Education is overturned.

Dated this 6th day of August, 2018

A handwritten signature in black ink, appearing to read "Michael J. Thompson", is written over a horizontal line.

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

Parties to this appeal are:

[REDACTED]

[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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