

THE STATE OF WISCONSIN  
BEFORE  
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  G [REDACTED] H [REDACTED]  by School District of Elmbrook Board of Education	DECISION AND ORDER  Appeal No.: 18-EX-13
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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 School District of Elmbrook Board of Education to expel the above-named pupil from the School District of Elmbrook. This appeal was filed by the pupil and received by the Department of Public Instruction on June 13, 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 an expulsion hearing notice dated October 24, 2017, and a revised hearing expulsion notice dated October 26, 2017, both sent from the district's superintendent for teaching and learning. Both notices advised that a hearing would be held on October 30, 2017 that could result in the pupil's expulsion from the School District of Elmbrook through the pupil's 21st birthday. The original hearing notice was sent separately to the pupil and his parents

on October 24, 2017. That notice alleged that the pupil, “on October 5, 2017, endangered the property, health or safety of others at Brookfield East High School.” The revised notice added the allegation that the pupil endangered the property, health or safety of others “by threatening to shoot up a school.”

The hearing was held in closed session on October 30, 2017. The pupil and his parents appeared at the hearing with 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 “engaged in conduct while not at school and while not 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 7, 2018, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil’s 21st birthday. A transcript of the hearing is 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 in this case raises two issues which require consideration. First, the appeal asserts that the school failed to provide a timely and sufficient hearing notice to the pupil and the pupil's parents. The expulsion statute requires the hearing notice include the specific grounds for expulsion and the particulars of the alleged misconduct. Wis. Stat. § 120.13(1)(c)4. 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) Dec. 4, 1998; *Justin E. v. Antigo Sch. Dist.*, (329) July 24, 1997.

In both the original and revised expulsion hearing notices sent by the district, the district does not explicitly state the specific grounds for expulsion. The district asserts that the expulsion hearing will be held to determine whether the pupil "endangered the property, health or safety of other," but that is not one of the statutory grounds for expulsion.

Furthermore, the notice of expulsion and the 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. The expulsion order does state one of the statutory grounds for expulsion, which is that the pupil engaged in conduct while not at school and while not under the supervision of a school authority which endangered the property, health or safety of others. However, the notice of expulsion hearing does not provide a statutory basis for the expulsion, nor does the stated basis align with the statutory grounds set forth by the hearing order.

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. In this matter, the district timely sent its original notice of expulsion hearing on October 24, 2017, 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 revised notice included more detail of the pupil's alleged conduct, but that revised notice was provided four days before the hearing. In order for an expulsion notice to be timely, it must be sent no less than five days before the hearing. Wis. Stat. § 120.13(1)(c)(4); *N.P. by Watertown Sch. Dist.*, (569) Mar. 13, 2006; *S.P. by Watertown Sch. Dist.*, (560) Dec. 20, 2005; *See also*, Wis. Stat. § 990.001 (computation of time necessary between notice and hearing excludes the day on which notice is sent and includes the day of the hearing).

Because the hearing notice in this case failed to state the statutory grounds for expulsion and was untimely, this expulsion must be reversed.

The appeal additionally argues that the district denied the pupil due process by failing to disclose all information gathered as part of the district's investigation, including a police report that undermines the hearsay testimony of a key student witness relayed by school administrators. Though school districts are strongly encouraged to do so, there is no general requirement that a district provide copies of exhibits to the pupil prior to the expulsion hearing, let alone disclose a complete record of the district's investigation. *M.J. by Mount Horeb Sch. Dist.*, (710) Jan. 28, 2014; *B.S. by Marshall Sch. Dist.*, (626) July 11, 2008; *N.K. by Marshall Sch. Dist.*, (620) May 15, 2008. Hearsay testimony may be considered sufficient evidence to support an expulsion

where factors establishing the reliability and probative value of such testimony are present. *Joshua S. by D. C. Everest Sch. Dist.*, (170) June 22, 1990. However, if school administrators possess evidence that clearly and significantly tends to support or oppose the reliability or probative value of hearsay testimony, due process requires that evidence be presented to the school board.

In reviewing the record in this case, I find the school district failed to comply with all of the procedural requisites. I, therefore, overturn this expulsion.


### 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 G [REDACTED] H [REDACTED] by the Elmbrook School District Board of Education is overturned.

Dated this 14<sup>th</sup> day of August, 2018

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

Parties to this appeal are:



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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.

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