


THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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<p>In the Matter of the Expulsion of</p> <p></p> <p>by Milwaukee Board of School Directors</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 21-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. § 119.25(2)(b) from the order of the independent hearing officer of the Milwaukee Board of School Directors to expel the above-named pupil from Milwaukee Public Schools. This appeal was filed by the pupil and received by the Department of Public Instruction on October 19, 2021.

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. § 119.25(2)(b).

**FINDINGS OF FACT**

The record contains a letter entitled “Notice of Student Expulsion Hearing,” dated August 25, 2021, from the student services supervisor of Milwaukee Public Schools. The letter advised that a hearing would be held on August 31, 2021 that could result in the pupil’s expulsion from Milwaukee Public Schools. The letter was sent separately to the pupil and her guardian. The letter alleged that the pupil engaged in conduct while at school or while under the supervision of

school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil “Endanger[ed] Physical Safety/Mental Well-being on Wednesday, August 18, 2021 at Milwaukee High School of the Arts.”

The hearing was held before an independent hearing officer via Google Meet in closed session on August 31, 2021. Neither the pupil nor her parent or guardian appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. On August 31, 2021, the independent hearing officer issued Proposed Findings of Fact and Conclusions of Law and an Expulsion Order. The independent hearing officer found that:

by **Endangerment of Physical Safety/Mental Well-being at Milwaukee High School of the Arts on Wednesday, August 18, 2021, [the pupil]** engaged in conduct while at school and while under the supervision of a school authority, which endangered the property, health and safety of others while at school and under the supervision of a school authority.

(emphasis in original). Based on this finding, the independent hearing officer found that the administration’s recommendation to expel the pupil was reasonably justified and that the interests of the district demand that the pupil be expelled until May 26, 2022. The independent hearing officer ordered that the pupil be expelled from Milwaukee Public Schools until May 26, 2022 and directed the administration to provide the pupil with a MPS Partnership School placement during the expulsion period. There is no evidence in the record that the expulsion order was mailed to the pupil and her parent or guardian.

There is no evidence in the record that the board reviewed and approved, reversed or modified the expulsion order issued by the independent hearing officer. Nor is there any evidence in the record that the board decision, if any was issued, was mailed to the pupil and her parent or guardian. A video recording of the expulsion hearing is part of the record.

## DISCUSSION

The expulsion statutes –Wis. Stat. §§ 119.25 and 120.13(1)(c) and (e) – give 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 raises one issue which requires consideration. The pupil contends that she was not allowed to be heard at the expulsion hearing because the school failed to give her hearing codes for the hearing. The pupil does not contend that she did not receive notice of the hearing. The pupil states that the first hearing date was August 24, 2021 and that the second hearing date was August 31, 2021. The record indicates that the August 24, 2021 hearing was an investigative review that was scheduled to be held as a virtual conference through Google Meet. The letter dated August 19, 2021 sent to the pupil’s guardian contained the Google Meet meeting id and a phone number to join by telephone. Regardless whether this letter provided the information necessary for the pupil to join the investigative review or whether it was sent to the pupil, an investigative, pre-expulsion meeting is not an expulsion hearing under Wis. Stat. § 119.25. Therefore, I have no authority to review it.

The Notice of Student Expulsion Hearing that the district sent to the pupil and her guardian on August 25, 2021 contained the details for joining the expulsion hearing via Google Meet in the notice itself. The notice also included a phone number through which the pupil could join the expulsion hearing by telephone. The pupil states that she “called up to the school” on

August 31 but does not say that she attempted to join the Google Meet through the link or phone number contained in the notice of expulsion hearing. The pupil also states that the school was late for the hearing and that a security guard told her that “they would just make a decision and call me back in 15 minutes.” The independent hearing officer began the hearing at 10:03 am on August 31, 2021, only three minutes after the scheduled start time. The hearing lasted 25 minutes, during which time the pupil could have followed the directions in the notice of expulsion hearing and joined the hearing. Because I am reversing the expulsion on other grounds, I need not address whether the security guard’s statement, if made, would be an independent basis for reversal.

Issues not raised by the pupil require reversal of the expulsion. Wis. Stat. § 119.25(2)(c) requires that a notice of expulsion hearing include all of the information specified in Wis. Stat. § 120.13(1)(e)4. The notice of expulsion hearing provided to the pupil failed to comply with the requirements of Wis. Stat. § 120.13(1)(e)4. It has long been precedent that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirements renders the expulsion void. *See, e.g., Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Alex H. v. Eleva-Strum Sch. Dist. Bd. of Educ.*, Decision and Order No. 438 (July 20, 2001). Among other things, the notice of expulsion hearing must state “the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” Wis. Stat. § 120.13(1)(e)4.a. The notice of expulsion hearing in this case merely alleged that the pupil engaged in expellable conduct by “Endangering Physical Safety/Mental Well-being on Wednesday, August 18, 2021 at Milwaukee High School of the Arts.” This does not constitute adequate notice. “[A] student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard.” *Keller v. Fochs*,

385 F. Supp. 262, 265 (E.D. Wis. 1974). 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. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *A.S. v. Milwaukee Public Sch. Dist. Bd. of Educ.*, Decision and Order No. 674 (Dec. 21, 2010). This entails providing detailed information about the conduct, not simple generalizations. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Eric Paul H. by Mischicot Sch. Dist. Bd. of Educ.*, Decision and Order No. 459 (Mar. 11, 2002). The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *A.S. v. Milwaukee Public Sch. Dist. Bd. of Educ.*, Decision and Order No. 674 (Dec. 21, 2010).

In the present case, the notice does not state the time that the alleged misconduct occurred, does not specify the location in the school where the alleged misconduct occurred and does not describe the conduct to be considered. For example, the notice does not describe how the pupil endangered physical safety or mental well-being or whose physical safety or mental well-being was endangered. Because the notice failed to include the particulars of the alleged misconduct, the school district did not give adequate notice to the pupil about the charges that would be considered at her expulsion hearing and the expulsion must be reversed. *See Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020) (reversing expulsion where notice of expulsion hearing described pupil’s misconduct as “intimidating a witness, assulting [sic] another student, and violating existing pre-expulsion conditions”); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019) (reversing expulsion where notice of expulsion hearing alleged student “came to school under the influence

of a substance”); *A.B. v. Milwaukee Academy of Science Charter School*, Decision and Order No. 697 (June 18, 2012) (reversing expulsion where notice of expulsion hearing described pupil’s misconduct as “04/25/2012: Assault/Fighting”).

The notice must also state the following:

f. That the hearing officer ... shall keep a full record of the hearing and, upon request, the hearing officer ... shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil’s parent or guardian.

Wis. Stat. § 120.13(1)(e)4.f. The only reference to a record of the hearing sent with the notice is on the page titled “Pupil Expulsions – Summary of Law – Pupil and Parent Rights” that accompanied the notice and includes the statement “The board must keep written minutes of the hearing.” This sentence does not comply with Wis. Stat. § 120.13(1)(e)4.f. Failure to include the required statement requires reversal. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Z.Y. v. Wauwatosa Sch. Dist. Bd. of Educ.*, Decision and Order No. 690 (Jan. 11, 2012); *Alex H. v. Eleva-Strum Sch. Dist. Bd. of Educ.*, Decision and Order No. 438 (July 20, 2001).

The notice of expulsion provided to the pupil also lacked the following required statements:

h. That within 30 days of the issuance of an expulsion order the school board shall review the order and shall, upon review, approve, reverse or modify the order.

i. That, if the pupil is expelled by the hearing officer or panel, the order of the hearing officer or panel shall be enforced while the school board reviews the order.

Wis. Stat. § 120.13(e)4. The failure to provide the statutorily-required information in the notice requires reversal of the expulsion.

Another issue not raised by the pupil must be addressed. An expulsion order or record must indicate that the board found the pupil guilty of the alleged misconduct, that the conduct

meets a statutory standard for expulsion and that the interests of the school demand expulsion. *See, e.g., St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *James R. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 396 (Aug. 17, 1999); *Douglas G. v. New London Sch. Dist. Bd. of Educ.*, Decision and Order No. 228 (Apr. 29, 1994). Although the hearing record contains information regarding the misconduct presented to the independent hearing officer, there is no indication in the expulsion order issued by the independent hearing officer as to what conduct the independent hearing officer *found* that the pupil engaged in to meet the statutory grounds for expulsion. This constitutes reversible error. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *James R. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 396 (Aug. 17, 1999); *Douglas G. v. New London Sch. Dist. Bd. of Educ.*, Decision and Order No. 228 (April 29, 1994). The only factual findings in the expulsion order related to the underlying misconduct are:

by **Endangerment of Physical Safety/Mental Well-being at Milwaukee High School of the Arts on Wednesday, August 18, 2021, [the pupil]** engaged in conduct while at school and while under the supervision of a school authority, which endangered the property, health and safety of others while at school and under the supervision of a school authority.

(Expulsion Order Independent Hearing Officer of the Milwaukee Board of School Directors (emphasis in original).) The expulsion order lacks a specific finding as to what the pupil did to endanger physical safety or mental well-being and is insufficient.

“Upon the ordering by the hearing officer ... of the expulsion of a pupil, the school district shall mail a copy of the order to the board, the pupil and, if the pupil is a minor, the pupil’s parent or guardian.” Wis. Stat. § 119.25(2)(b). The record contains no indication that the

expulsion order was mailed to the pupil or to her parent or guardian. This also constitutes reversible error.

A final matter must be discussed. An expelled pupil may appeal the school board's determination to the state superintendent. Wis. Stat. § 119.25(2)(b). In the present case, there is no dispute that the pupil was expelled. However, the record provided by the district lacks any decision issued by the board. As discussed above, the notice of expulsion hearing and the order issued by the independent hearing officer are deficient and require reversal of the expulsion. The board's failure to review the hearing officer's order and approve, reverse or modify the order within 30 days is independent grounds for reversal of the expulsion. *See* Wis. Stat. § 119.25(2)(b); *D.S. v. Racine Sch. Dist. Bd. of Educ.*, Decision and Order No. 590 (Apr. 23, 2007).

In reviewing the record in this case, I find that the school district did not comply with all of the procedural requirements. I therefore reverse this expulsion. If the district chooses, it may remedy the errors by providing proper notice of the expulsion hearing and rehearing the expulsion. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *J.L. v. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *Z.Y. v. Wauwatosa Sch. Dist. Bd. of Educ.*, Decision and Order No. 690 (Jan. 11, 2012).

### **CONCLUSIONS OF LAW**

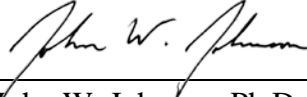
Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of Wis. Stat. § 119.25.



**ORDER**

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Milwaukee Board of School Directors is reversed.

Dated this 7th day of December, 2021



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John W. Johnson, Ph.D.  
Deputy State Superintendent of Public Instruction

**APPEAL RIGHTS**

Wis. Stat. § 119.25(2)(b) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court for 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:

[REDACTED]  
[REDACTED]  
[REDACTED]

Keith Posley  
District Administrator  
Milwaukee Public Schools  
5225 W. Vliet Street  
Milwaukee, WI 53208

**COPIES MAILED TO:**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Nick Sinram  
Assistant City Attorney  
841 N. Broadway Street, Suite 716  
Milwaukee, WI 53202