


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.: 22-EX-05</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’s mother and received by the Department of Public Instruction Office of Legal Services on April 8, 2022.

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 December 28, 2021, from a student services supervisor of Milwaukee Public Schools. The letter advised that a hearing would be held on January 4, 2022 that could result in the pupil’s expulsion from Milwaukee Public Schools. The letter was sent separately to the pupil and her mother. 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 “[o]n Friday, December 3, 2021, [the pupil] was found to be in possession of 11.7 grams of marijuana while at Rufus King High School.”

The hearing was held before an independent hearing officer via Google Meet in closed session on January 4, 2022. The pupil and her mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations. On January 4, 2022, the independent hearing officer issued proposed findings of fact and conclusions of law. The independent hearing officer found that:

by **Possession/Ownership/Use of Drugs- Marijuana (11.7 grams) on Friday, December 3, 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.

(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 December 23, 2022. The independent hearing officer ordered that the pupil be expelled from Milwaukee Public Schools until December 23, 2022 and directed the administration to provide the pupil with an MPS Partnership School placement as determined by the IEP team during the expulsion period. The decision of the independent hearing officer was reviewed by the Milwaukee Board of School Directors on January 27, 2022. The board approved the expulsion order issued by the hearing officer and notified the pupil and her mother of that approval by mail on January 28, 2022. 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 four issues which require consideration. First, appellant contends that the pupil has never been a problem student and that truancy was not an issue until she attended Rufus King High School where communication was inadequate and not structured as it should be. The pupil records law, Wis. Stat. § 118.125, permits the use of a pupil’s record in connection with the suspension or expulsion of the pupil. If the school board provides notice to the pupil that their records may be used, then the board may use the records to determine the punishment. *L.P. v. Whitewater Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 351 (Mar. 31, 1998). Here, the notice of expulsion hearing notified the pupil that if the hearing officer found that expellable misconduct occurred, the pupil’s complete disciplinary and academic records may be considered in determining whether to expel the pupil and for how long. Therefore, consideration of the pupil’s attendance record was permissible.

Second, appellant complains that the investigation was “word of mouth from Principal Anderson” and was reported inaccurately. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *D.S. v. Nicolet Union High Sch. Dist. Bd. of Educ.*, Decision and

Order No. 702 (Jan. 18, 2013). The hearing was the pupil and her mother's opportunity to explain why they believed the investigation was reported inaccurately, and they did so to some extent, for example by stating that the pupil never had a pipe. Appellant also challenged the accuracy of the absences noted for the pupil. Finally, appellant questioned the amount of marijuana the pupil had, noting that that the alleged 11.7 grams is greater than the amount for which the Milwaukee Police Department may issue a ticket yet the pupil never received a ticket. Arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011); *A.D. v. Silver Lake J1 Sch. Dist. Bd. of Educ.*, Decision and Order No. 665 (June 28, 2010). A school board's findings will be upheld if any reasonable view of the evidence sustains them. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020). The exhibits introduced by the district provided sufficient evidence to sustain the findings in this case.

Appellant complains that despite her request to Principal Anderson, she was never provided with a copy of the police report. No police report was submitted for consideration at the hearing, so appellant's failure to receive the report is not a basis for reversal.

Finally, appellant challenges the length of the expulsion and notes that the pandemic, virtual learning as an IEP student, her parents' divorce, substance abuse and mental health issues have taken a big toll on the pupil. The decision to expel a student and for how long are within the complete discretion of the school board as long as it complies with all the procedural requirements of Wis. Stat. §§ 119.25 and 120.13(1)(c). *Oshkosh Area Sch. Dist. Bd. of Educ.*,

Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020). The school board is in the best position to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *C.T. v. Milwaukee Pub. Schs.*, Decision and Order No. 718 (May 22, 2014). In reviewing this case, I do not see an extraordinary circumstance that would cause me to modify the pupil's expulsion period.

However, issues not raised by appellant 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., Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 806 (Dec. 7, 2021); *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). The notice must 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. *Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 806 (Dec. 7, 2021); *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).

Another issue not raised by appellant is the fact that the district proceeded with the virtual expulsion hearing despite acknowledging that the pupil and her mother did not have copies of the district’s exhibits. Although the state superintendent’s review of an expulsion is primarily limited to ensuring compliance with the due process requirements contained in the expulsion statutes, the state superintendent must also ensure that basic due process was afforded in the expulsion hearing. See *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *P.L.Y. by the Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, Decision and Order No. 182 (Oct. 9, 1991) (state superintendent must address constitutional error). “Basic fairness and integrity of the fact-finding process are the guiding stars.” *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d at 663, 321 N.W.2d at 337 (quoting *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697, 701 (5th Cir. 1974)). It is a tenet of due process and a matter of basic fairness that exhibits introduced at an expulsion hearing and considered by a hearing officer be provided to the pupil so that she may fully review and respond to the exhibits. Although there is no requirement that the district provide copies of hearing exhibits to the pupil before the hearing, the district is required to provide copies of all documents presented to the board or the hearing examiner to the pupil at the hearing. *B.S. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 626 (July 11, 2008). Although the district representative said she would make sure the appellant received a copy of the exhibits, due process requires that the pupil and her mother have the exhibits during the

hearing in order to respond to them before the expulsion decision is made. It is unclear why, given that the district and the independent hearing officer knew that the pupil did not have copies of the exhibits, the hearing was not rescheduled so that the district could provide the exhibits to the pupil. During the hearing, many of the exhibits were either read into the record at the hearing or were shared on screen so that the pupil and her mother had an opportunity to view them, at least fleetingly. This is insufficient to allow the pupil and her mother the opportunity to fully review the exhibits and raise any concerns they may have had and is grounds for reversal. It is also concerning that the hearing officer accepted the exhibits into evidence without asking the pupil or appellant whether they objected to any of the exhibits; the better practice would be to consider any objections before accepting the exhibits.

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. *Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 806 (Dec. 7, 2021); *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).

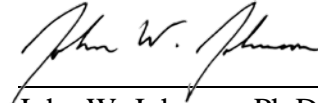
### **CONCLUSIONS OF LAW**

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 3rd day of May, 2022



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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]

[REDACTED]  
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