Decision and Order No.: 813

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by Siren School District Board of Education	DECISION AND ORDER Appeal No.: 22-EX-06

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 Siren School District Board of Education to expel the above-named pupil from the Siren School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 27, 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. § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Pupil Expulsion Hearing," dated January 19, 2022, from the associate principal of Siren Middle/High School. The letter advised that a hearing would be held on February 3, 2022 that could result in the pupil's expulsion from the Siren School District through his 21st birthday. The letter was addressed to the pupil and his mother and sent to his mother by certified mail. The letter alleged that the pupil engaged in

conduct while a student at Siren Schools that endangered the health and safety of others at school. The letter specifically alleged that "[o]n January 14, 2022 the [pupil] had in their possession illegal drugs and drug paraphernalia on school grounds and in the possession, and distribution of child pornography." The letter also alleged that the pupil had violated school board policies and Siren High School Handbook provisions.

The hearing was held in closed session on February 3, 2022. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother were given the opportunity to present evidence and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that the pupil's involvement in the incident constituted grounds for expulsion. The letter from the district administrator containing the findings of fact of the school board, dated February 4, 2022, was mailed to the pupil's mother. The letter stated the pupil was expelled until his 18th birthday, and provided for early reinstatement on February 14, 2022 if the pupil complied with certain conditions. An audio recording of the expulsion 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 demands the pupil's expulsion.

The appeal letter in this case raises seven issues. First, the pupil argues that the school board overstepped its authority when it considered allegations involving a student enrolled outside of the district. Because the expulsion will be reversed on procedural grounds, it is unnecessary to address this argument.

Second, the pupil contends that the district failed to provide adequate notice of the expulsion hearing. I agree. The notice of expulsion hearing provided to the pupil failed to comply with the requirements of Wis. Stat. § 120.13(1)(c)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.*, *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 805 (Aug. 10, 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). Among other things, the notice of expulsion hearing must state "The specific grounds, under subd. 1., 2. or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based." Wis. Stat. § 120.13(1)(c)4.a. The notice of expulsion hearing in this case merely alleged that the pupil engaged in expellable conduct because "[o]n January 14, 2022 the [pupil] had in their possession illegal drugs and drug paraphernalia on school grounds and in the possession, and distribution of child pornography." 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). 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 this case, the notice does not state the time that the alleged misconduct occurred, does not specify the location on school grounds where the alleged misconduct occurred and does not adequately describe the conduct to be considered. For example, the notice does not describe what illegal drugs the pupil possessed, what drug paraphernalia the student possessed, and does not provide any details regarding the child pornography allegation, such as a description of the child pornography, where the pupil possessed it and how and to whom he distributed it. 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 his expulsion hearing and the expulsion must be reversed. *See Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 805 (Aug. 10, 2021) (holding notice inadequate as to the location of the alleged misconduct where it alleged "[o]n or about May 24, 2021, [the pupil] was in possession of marijuana (THC concentrated pod), a dab pen, two vape pens, and four nicotine pods while at school and/or under the supervision of school authorities"); *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").

In addition, there are inadequacies with the notice's specification of the specific statutory grounds upon which the expulsion proceeding is based. The notice alleged that the pupil violated "Wisconsin State Statute 120.13(1)(b) 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." Although Wis. Stat. § 120.13(1)(b) applies only to suspensions, the same language is contained in Wis. Stat. § 120.13(1)(c)1. and, giving the district the benefit of the doubt, I will treat the notice as citing to the language from Wis. Stat. § 120.13(1)(c)1. However, the particulars stated in the notice do not indicate that any of the pupil's conduct being considered for expulsion occurred while not at school or while not under the supervision of a school authority, or that it endangered an employee or school board member. Separately, the notice alleged that the pupil's conduct supports a finding that the pupil "engaged in conduct while a student at Siren Schools that endangered the health and safety of others at school." This does not clearly state a specified basis for expulsion under Wis. Stat. § 120.13(1)(c) because it is not clear from the statement whether the district is alleging that the student's conduct occurred at Siren Schools or occurred while he was a student enrolled at Siren Schools.

Third, the pupil contends that the board's application of the student code of conduct resulted in undue punishment, constituting an extraordinary circumstance warranting reversal of the expulsion. 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. § 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). As already discussed, the expulsion will be reversed because the board failed to comply with procedural requirements.

Fourth, the pupil contends that the board failed to find that the interest of the school demands expulsion. I agree that there were errors in the substance and form of the board's expulsion decision, including failure to find that the interest of the school demands expulsion. The record does not contain a written order from the school board. Instead, the district administrator sent a letter purporting to document the board's findings and terms of expulsion. Even accepting the letter from the district administrator as the board's order, the letter is inadequate.

The letter states:

> On Thursday, February 3, 2022 an expulsion hearing was conducted for [the pupil] because it was believed that [the pupil] violated the student code of conduct in the Siren School District by possessing illegal drugs and drug paraphernalia on school property, thereby endangering the health and safety of the students and staff. [The pupil] was recommended for expulsion because the school administration believes there is substantial proof that [the pupil]'s actions met the following definition which constitutes grounds for expulsion:
>
> > Conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others; or endangering the property, health or safety of any employee or school board member.
>
> During the expulsion hearing, the Siren Board of Education made the following findings:
>
> 1. The administration properly noticed the meeting and notified the student and guardian.
>
> 2. The administration proved that [the pupil] did violate the student code of conduct related to drug/alcohol possession.

3. [The pupil]'s actions demand his expulsion from the Siren School District, and the expulsion shall be enforced consistent with the list of recommendations from the School Board.

The terms of the expulsion are summarized as follow[s]:

…

Enclosed is a code violation letter issued from our Athletic Director, Ryan Karsten. This is in regard to possession of smoking or chewing tobacco or other devices or products for burning tobacco, or vapor juice with or without nicotine, or other substitute forms of cigarette products that may contain nicotine. This code violation was acknowledged by the Board of Education.

The district administrator, who signed the letter, may not independently make findings but may merely document findings made by the board. The only findings that the board made on the record were the following statements by the board president following the board's post-hearing deliberations:

I will now read and answer the four questions as answered by the board.

1. Does the student's involvement in the incident presented constitute grounds for expulsion consistent with the expulsion notification letter? And the answer to that is yes, 7-0.

2. Did the administration prove their case in relation to the accused violation? The school board voted yes, again at a vote of 7-0.

3. Do the actions of the student demand his expulsion from school? The answer is yes with a vote of 4-3.

[4.]Does the school board accept the recommendation of the administration in full? The school board does not. The school board has come up with its own recommendation for this matter, and it is as follows….

A school board may expel a pupil only when it "is satisfied that the interest of the school demands the pupil's expulsion." Wis. Stat. § 120.13(1)(c)1. The statement that "the actions of the student demand his expulsion" is not equivalent to saying that the interest of the school demands the pupil's expulsion; the key is the interest of the school, not use of the word "demand." As noted by the pupil, the board failed to determine whether the interest of the school

demands expulsion and the letter from the district administration fails to document such a determination. This requires reversal of the expulsion. *C. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 592 (May 4, 2007).

The board's findings are inadequate for additional reasons. As already discussed, the notice of pupil expulsion hearing did not adequately state the particulars of the misconduct alleged. Therefore, the finding that "the student's involvement in the incident presented constitute[s] grounds for expulsion consistent with the expulsion notification letter" and that the administration proved its case in relation to the "accused violation" does not constitute a finding as to what the pupil actually did that can support the expulsion decision. In addition, the board failed to state the statutory grounds for expulsion that it found had occurred: first, the letter states the administration recommended expulsion on the basis of statutory grounds different than those cited in the notice, and then fails to include any statement of what grounds the board found occurred. Because the school district is required to provide the pupil advance notice of the statutory grounds on which it intends to proceed, it cannot make its finding based upon different statutory grounds for which the student did not receive notice. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *Travis J.M. v. Deerfield Cmty. Sch. Dist. Bd. of Educ.*, Decision and Order No. 423 (Sep. 25, 2000). In this case, the statutory ground stated in the expulsion letter, even ignoring the fact that the board did not find that the pupil engaged in conduct meeting that standard, was different than the grounds stated in the notice. The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *Travis J.M. v. Deerfield Cmty.*

Sch. Dist. Bd. of Educ., Decision and Order No. 423 (Sep. 25, 2000). This standard was not met and requires reversal.

Fifth, the pupil contends that the board overstepped its authority when it imposed conditions of reinstatement that were unrelated to the basis of the expulsion. "A school board … may specify one or more early reinstatement conditions in the expulsion order under par. (c)3. … if the early reinstatement conditions are related to the reasons for the pupil's expulsion." Wis. Stat. § 120.13(1)(h)2. An expelled pupil or the pupil's parent may appeal the determination regarding relatedness to the school board within 15 days after the date of the expulsion order. "The decision of a school board regarding that determination is final and not subject to appeal." Wis. Stat. § 120.13(1)(h)2. Therefore, I have no authority to address the pupil's contention that the conditions of reinstatement were unrelated to the basis for the expulsion.

Sixth, the pupil cites Wis. Stat. § 120.13(1)(e)4.f and contends that the board failed to provide an adequate record of the hearing. However, the requirements of Wis. Stat. § 120.13(1)(e)4. apply only when the expulsion hearing is conducted by an independent hearing panel or an independent hearing officer. They do not apply to an expulsion hearing conducted by the school board, as occurred in this case. Here, the notice of pupil expulsion hearing contained the required language that "the school board shall keep written minutes of the hearing." Wis. Stat. § 120.13(1)(c)4.f. I note that in addition to the notice requirement in Wis. Stat. § 120.13(1)(c)4.f., Wis. Stat. § 120.13(1)(c)3. requires school boards to keep written minutes of expulsion hearings. The district did not submit written minutes with the hearing record. This could be grounds for reversal. *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *Donald K. v. Little Chute Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 490 (Apr. 22, 2003). However, the board did submit an audio

recording of the hearing as part of the record, in addition to a document titled "Recorder Record" that contains much of the information that would be contained in minutes. Because the audio recording was of satisfactory quality to enable a meaningful review of the hearing, I will not overturn the expulsion on this basis. *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *Donald K. v. Little Chute Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 490 (Apr. 22, 2003). I caution school districts against relying on audio recordings, because they may be so garbled or inaudible as to be useless for review purposes. *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *Donald K. v. Little Chute Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 490 (Apr. 22, 2003).

Finally, the pupil contends that the district failed to provide adequate notice and an opportunity for the pupil to be heard before revoking the pupil's early reinstatement. The pupil contends that Wis. Stat. § 120.13(1)(h)4. and 4m.[1] entitle the pupil to an opportunity to present an explanation of the alleged violation of terms of early reinstatement or conditional enrollment. The pupil is correct, but the state superintendent has no jurisdiction to review a district's revocation of early reinstatement. *See* Wis. Stat. § 120.13(1)(h)6. ("The decision of the school district administrator or his or her designee is final."); *A.O. v. Hudson Sch. Dist. Bd. of Educ.*, Decision and Order No. 570 (Mar. 27, 2006).

An issue not raised by the pupil warrants mention. The pupil is 15 years old and, therefore, a minor. "Not less than 5 day' written notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian." Wis. Stat. § 120.13(1)(c)4. (emphasis added). Similarly, "[u]pon the ordering by the school board of the

[1] Wis. Stat. § 120.13(1)(h)4m. applies when a student enrolls in a district other than the district that expelled the student and does not apply to the pupil's allegations here.

expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian." Wis. Stat. § 120.13(1)(c)3. (emphasis added). Placing two notices in one envelope does not meet these requirements. The state superintendent has previously overturned expulsions where notices and expulsion orders were not sent separately to the pupil and the pupil's parents. *R.M. v. Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (Jan. 30, 2014) (no evidence notice sent separately to pupil); *R.K. v. Philips School Dist. Bd. of Educ.*, Decision and Order No. 435 (June 25, 2001) (both pupil's and parent's notice provided to pupil); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014) (no evidence order mailed separately to pupil); *Z.Y. v. Wauwatosa Sch. Dist. Bd. of Educ.*, Decision and Order No. 690 (Jan. 11, 2012) (no evidence order mailed separately to pupil and parents). The record provided by the district suggests that the district mailed a single copy of the notice of expulsion hearing and the expulsion decision addressed to the pupil and his mother. Although the district stated at the beginning of the hearing that separate copies of the notice of expulsion had been sent by certified mail to the pupil and to his parent, Exhibit C, identified as the proof of certified mailing, contains a single certified mail receipt for an item sent January 19, 2022 to the pupil's mother and no certified mail receipt indicating that the notice was sent separately to the pupil. Similarly, the record contains a single certified mail receipt for an item sent February 4, 2022 to the pupil's mother. The format of the notice, with two address blocks, suggests that separate copies of the notice were to be sent to the pupil and his mother while the format of the expulsion decision, with one address block, suggests that a single copy was sent to the pupil and his mother. Regardless, the record contains no certified mail receipt that the notice and decision were mailed to the pupil. I caution the district that failure to send separate copies of the notice and the expulsion order is grounds for reversal.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. 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 27, 2020); *J.L. v. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019).

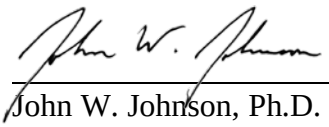
CONCLUSIONS OF LAW

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. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [redacted] by the Siren School District Board of Education is reversed.

Dated this 15th day of June, 2022



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

APPEAL RIGHTS

Wis. Stat. § 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 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]

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