

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

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by Westfield School District  
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-07

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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 Westfield School District Board of Education to expel the above-named pupil from the Westfield School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on May 18, 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 Expulsion Hearing," dated April 27, 2022, from the district administrator of the Westfield School District. The letter advised that a hearing would be held on May 10, 2022 that could result in the pupil's expulsion from the Westfield School District through his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. 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 “received and consumed 2 ADD pills from a student with the intent to pay for them later. This was reported to Mr. Saloun, Westfield Area High School/Middle School Vice Principal at 8:30 am on April 26, 2022.”

The hearing was held in closed session on May 10, 2022. 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 found 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. The school board further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact of the school board, dated May 10, 2022, was mailed separately to the pupil and his parents. The order stated the pupil was expelled from May 11, 2022 through June 20, 2023, with an opportunity for early reinstatement at the start of the 2022-2023 school year (September 1, 2022) if certain conditions were met. Minutes of the school board 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 demands the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellant contends that the pupil should not be expelled because he was not the one who brought prescription medication to school and tried to sell it. Appellant also contends that the pupil had never been suspended or in such a serious situation before, that he made a mistake and is now better educated about the risks of taking medication from someone. Appellant does not dispute the board's finding that the pupil received and consumed two ADD pills from a student with the intent to pay for them later. 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). *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *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. *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *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). Although I see no extraordinary circumstance here that would prompt me to overrule

the determination of the board that expulsion is the appropriate response to the pupil's actions, I do find that procedural violations, discussed below, require reversal of the expulsion.

Second, appellant suggests that the pupil's actions with respect to the medication are the school's fault, saying "I trusted this school with my child and then this happens." Nothing in the record supports a conclusion that the school caused the pupil to accept and consume the medication. As already discussed, no extraordinary circumstance exists that might cause me to determine that the board's decision to expel the pupil was inappropriate.

Third, appellant states that school "policy states that they would rather use educational means than punitive means." Whether the school board's policies support the pupil's expulsion or would have allowed a different outcome is irrelevant to my review. The relevant question is whether the board could reasonably have determined, based on the evidence presented at the hearing, that the statutory requirements for expulsion were met.

Two issues not raised by appellant require mention. 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 particulars of the pupil's alleged conduct upon which the expulsion proceeding is based." Wis. Stat. § 120.13(1)(c)4.a. "[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). The notice of

expulsion hearing in this case merely alleged that the pupil engaged in expellable conduct because the pupil “received and consumed 2 ADD pills from a student with the intent to pay for them later. This was reported to Mr. Saloun, Westfield Area High School/Middle School Vice Principal at 8:30 am on April 26, 2022.” This does not constitute adequate notice. 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. *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). 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 date or time that the alleged misconduct occurred, does not specify the location where the alleged misconduct occurred and does not adequately describe the medication. The notice specifies when the incident was reported to the school district, but not when or where the pupil is alleged to have received and consumed the pills or whether the pills were received and consumed together or at separate times. In addition, “ADD medication” does not adequately describe the medication.<sup>1</sup> Because the notice failed to

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<sup>1</sup> A Google search indicates that ADD medication is an outdated term for medication used to treat attention deficit hyperactivity disorder (ADHD) and that there are many different types of medication used to treat ADHD. *See, e.g., <https://www.forbes.com/health/mind/add-vs-adhd/>* (“ADD is the former name for the disorder now known as ADHD. As of the name change in 1994, the term ADHD encompasses attention deficit diagnoses even if the patient does not exhibit hyperactivity. ADD may still be used to describe non-hyperactive forms of ADHD while some people use ADD as shorthand or interchangeably with ADHD.”);

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, e.g., Siren Sch. Dist. Bd. of Educ.*, Decision and Order No. 813 (June 15, 2022) (holding allegation in notice 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” was inadequate because it failed to state time that the alleged misconduct occurred, specify the location on school grounds where the alleged misconduct occurred and did not adequately describe the conduct to be considered); *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 to the inadequacy of the notice of expulsion hearing, the board’s findings of fact may be inadequate. The hearing record supports a conclusion that the pupil received and consumed “ADHD pills” but contains no evidence regarding “ADD pills.” The record does not indicate that any evidence was submitted to the board regarding the specific name of the medication that the pupil received and consumed. The minutes indicate that during the investigation, the pupil admitted receiving and consuming one ADHD pill on April 25 in the school bathroom during first hour and receiving and consuming one ADHD pill on April 26 in

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<https://my.clevelandclinic.org/health/diseases/4784-attention-deficithyperactivity-disorder-adhd#management-and-treatment> (listing medications used to treat ADHD).

the science classroom. Despite this evidence, the board’s finding of fact states solely “That the pupil [] is found guilty of the following: [the pupil] received and consumed 2 ADD pills from a student with the intent to pay for them later.” The board did not make a finding as to the date or dates this occurred, where it occurred, what medication the pills were or why the board found that the pupil took “ADD pills” when the hearing minutes indicate all evidence was about “ADHD pills.” Best practice would be for the board’s findings to contain the actual facts necessary to support the expulsion order.

In reviewing the record in this case, I find the school district failed to 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 28, 2020); *J.L. v. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019).

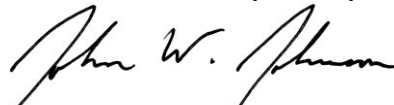
**CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to 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 Westfield School District Board of Education is reversed.

Dated this 7<sup>th</sup> day of July, 2022



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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]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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