

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

██████████

by Janesville School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-10

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(e) from the order of the Janesville School District Board of Education to expel the above-named pupil from the Janesville School District. This appeal was filed by the pupil's parents and received by the Department of Public Instruction on July 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. § 120.13(1)(e).

FINDINGS OF FACT

The record contains a letter dated May 23, 2022, from the superintendent of the Janesville School District that advised that a hearing would be held on June 6, 2022 that could result in the pupil's expulsion from the Janesville 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 in school which endangered the property, health and safety of others.

The letter specifically alleged that on May 19, 2022, the pupil “engag[ed] in a physical attack on staff on school grounds at Marshall Middle School.”

The hearing was held in closed session before an independent hearing officer on June 6, 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.

The hearing officer found that the pupil engaged in conduct while in school which endangered the property, health and safety of others by engaging in a physical attack on staff. The hearing officer 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 the hearing officer, dated June 7, 2022, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until age 21 with an opportunity for early reinstatement no earlier than the second semester of the 2022-2023 school year. The decision of the independent hearing officer was reviewed and approved by the school board on June 14, 2022. Minutes of the expulsion hearing and an audiotape of the expulsion hearing are part of the record.

DISCUSSION

The expulsion statute –Wis. Stat. § 120.13(1)(c) and (e) – 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, appellants suggest that the pupil should not have been expelled because his actions were done out of anger and were the result of one bad decision and because he apologized for his actions. Appellants contend that none of the pupil's positive actions during the school year were considered and that a single negative event was the determining factor in his expulsion. The decision to expel a student and for how long is 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) and (e). *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 hearing officer and 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, appellants contend that the early reinstatement conditions require the pupil to “almost be perfect in doing schooling online” and do not give the pupil “a fair chance with his new freshman year in high school.” “[A]n independent hearing officer acting under par. (e) may specify one or more early reinstatement conditions in the expulsion order under par. ... (e)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. Appellants do not argue that the conditions of early reinstatement are unrelated to the reasons for expulsion, and, even if they did, the school board’s decision regarding relatedness is final. Instead, appellants note that many kids performed poorly with online courses, and they point to a state policy preference for in-person instruction. The only early reinstatement condition relevant to online schooling requires the pupil to “[a]ctively participate in any academic programming made available to him by the Janesville School District during the period of his expulsion and achieve consistent with his abilities.” I decline to modify this condition.

Finally, appellants contend that the pupil was not given a fair chance to attend school in person because of racial bias. However, appellants do not allege that students of a different race who pushed a teacher were not expelled or provide any explanation for their allegation of bias. Regardless, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *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). As a general rule, and one that applies in this case, I do not have the authority to address issues of fairness and unevenness of disciplinary measures. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *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). I see no extraordinary circumstance here that would prompt me to overrule the determination of the hearing officer and the board that expulsion is an appropriate response to the pupil's actions. The pupil pushed a teacher in the chest multiple times, causing the teacher to suffer chest pain. Although the district could have chosen not to pursue expulsion despite the pupil's actions, or the hearing officer or board could have chosen not to expel the pupil, I cannot say that the decision to expel the pupil was so extraordinary under the circumstances that it requires reversal. This does not minimize the seriousness of appellants' allegations. If the pupil believes he was discriminated against on the basis of his race, he may follow the district's non-discrimination policy and procedure to file a complaint with the district. If he does so and receives a negative determination from the district, he may file an appeal under Wis. Stat. § 118.13(2)(b). *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).

Statutory violations not raised by appellants require reversal of the expulsion. 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., 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)(e)4.a. The notice of expulsion hearing in this case merely alleged that on May 19, 2022, the pupil engaged in expellable conduct by “engaging in a physical attack on staff on school grounds at Marshall Middle School.” 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. *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); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019). 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 adequately describe the conduct to be considered. For example, the notice does not describe how many staff were attacked or name the staff who were attacked. 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 Milwaukee Bd. of Sch. Directors*, Decision and Order No. 806 (Dec. 7, 2021) (reversing expulsion based on inadequate notice where notice described misconduct as “Endangering Physical Safety/Mental Well-being on Wednesday, August 18, 2021 at Milwaukee High School of the Arts.”); *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.”); *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”).

In addition, 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 contained in the notice is the statement "Electronic minutes will be kept 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, as the district was notified two years ago in a previous expulsion appeal. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *see also 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).

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.

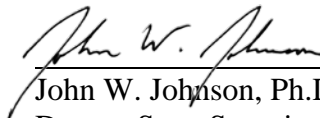
CONCLUSIONS OF LAW

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)(e).

ORDER

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

Dated this 25th day of August, 2022



John W. Johnson, Ph.D.

Deputy State Superintendent of Public Instruction

APPEAL RIGHTS

Wis. Stat. § 120.13(1)(e)3. 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]
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Mark Holzman
District Administrator
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COPIES MAILED TO:

[REDACTED]
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