

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Waupun Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-12

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 Waupun Area School District Board of Education to expel the above-named pupil from the Waupun Area School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on August 29, 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 January 6, 2022, from the district administrator of the Waupun Area School District. The letter advised that a hearing would be held on January 18, 2022, that could result in the pupil's expulsion from the Waupun Area School District through his 21st birthday. The letter was sent separately to the pupil and his father by certified mail. The letter alleged that the pupil engaged in conduct while

at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically stated that “on December 22, 2021, it is alleged that, while on school campus, you stated to another student ‘Don’t come to school tomorrow, I’m going to shoot those two kids.’”

The hearing was held in closed session on January 18, 2022. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father 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, on December 21, 2021, 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 students, faculty, and employees of the Waupun Area School District demand the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated January 24, 2022, was mailed separately to the pupil and his father. The order stated the pupil was expelled through his 21st birthday for threatening to shoot other students in the Waupun Area Junior/Senior High School on December 21, 2021. The record includes a notarized transcript of the expulsion hearing.

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 one issue which requires consideration. Appellant disagrees with the school board's decision and identifies numerous circumstances to contend that the expulsion is unjustified. Appellant argues that the school board erred in its decision because the threat assessment of the pupil was low, and the recommendation of expulsion was based on the fact that the pupil was new to the district; moreover, the school administration did not take steps to verify the pupil's character by contacting his previous school or his grief counselor. Appellant further maintains that, in making the threat, the pupil was venting in private after he was bullied and humiliated by other students, and he did not intend to follow through on his words. According to appellant, the pupil's truthful admission to making the threat was leveraged by the school to condemn him, effectively punishing the victim of bullying, while protecting the bullies and the school from culpability. Finally, appellant asserts that the school board failed to consider the school's responsibility for the underlying events because the pupil's threat was, in the first place, caused by being bullied and assaulted at school during a poorly supervised event. Appellant thus urges the state superintendent to review the underlying events that led to the expulsion to determine if the school board was justified in its decision.

Although appellant requests that the state superintendent review the grounds for the 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 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 conduct that endangers the property, health, or safety of others. 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 school boards determination that expulsion is the appropriate response to the pupil's actions, I do find that a procedural violation, discussed below, requires reversal of the expulsion.

The notice of expulsion hearing did not provide the pupil with adequate notice of the allegations against him because it specified an incorrect date of the alleged conduct. 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. When the notice of an expulsion hearing fails to provide the correct date of the alleged conduct, it has not satisfied this requirement. *See, e.g., F.T. v. Watertown Sch. Dist. Bd. of Educ.*, Decision and Order No. 656 (March 4, 2010) (reversing expulsion because notice alleged misconduct occurred on September 18, 2009, when the conduct actually occurred on September 9, 2009); *A.T. v. Waupun Sch. Dist. Bd. of Educ.*, Decision and Order No. 625 (July 11, 2008) (reversing expulsion because notice alleged possession of a knife at school on February 22, 2008, and board found that misconduct

occurred on February 29, 2008); *Randy H. v. Central/Westosha UHS Sch. Dist. Bd. of Educ.*, Decision and Order No. 204 (April 6, 1993) (reversing expulsion because notice stated that student allegedly possessed a gun on school grounds on January 9, 1992, when hearing record indicated conduct occurred on December 9, 1992). In the present case, the notice of expulsion hearing specified that the alleged misconduct occurred on December 22, 2021. However, the school board found that the student made the threat on December 21, 2021, and the expulsion order specifies December 21, 2021, as the date of the threat. Thus, because it did not specify the correct date of pupil’s conduct, the notice of expulsion hearing did not satisfy the statutory requirement of specifying the particulars of the alleged conduct.

In addition to specifying an incorrect date, the notice of expulsion hearing failed to specify the time and specific location of the pupil’s alleged conduct. Proper notice must inform the pupil of the time frame during which the alleged conduct occurred and where the alleged conduct occurred. *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 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). In the present case, the notice states that the alleged conduct occurred “while on school campus,” but it does not provide detailed information about the time or on-campus location of the alleged conduct. Thus, the notice of expulsion hearing did not adequately specify the particulars of the conduct to be considered at the hearing. *See Siren Sch. Dist. Bd. of Educ.*, Decision and Order No. 813 (June 15, 2022) (holding allegation 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); *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.”); *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”); *Westfield Sch. Dist. Bd. of Educ.*, Decision and Order No. 814 (July 7, 2022) (reversing expulsion for lack of specificity as to time frame when misconduct occurred, where the misconduct occurred and to adequately describe the medication where notice of hearing alleged 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.”).

Since the notice of expulsion hearing did not satisfy the requirement of specifying the particulars of the pupil’s alleged conduct, the school board did not follow the required statutory procedures, and I am compelled to reverse the expulsion. A student facing expulsion is entitled to adequate notice of the charges against him or her so as to allow for a meaningful opportunity to be heard, even when the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385

F. Supp. 262, 265 (E.D. Wis. 1974). 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).

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites because the notice of expulsion hearing was inadequate. I, therefore, reverse this expulsion. This decision does not condone the pupil's conduct, nor does it suggest that the school board's decision was inappropriate. However, I must uphold the requirements set forth in the statutes.

If the school district chooses, it may remedy this procedural error by providing proper notice of the expulsion hearing and rehearing the expulsion. *See, e.g., Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *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).

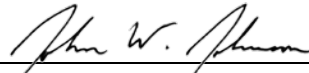
CONCLUSIONS OF LAW

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 Waupun Area School District Board of Education is reversed.

Dated this 21st day of October, 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]
[REDACTED]

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