

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Loyal School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-16

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 Loyal School District Board of Education to expel the above-named pupil from the Loyal School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on October 11, 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 August 22, 2022, from the superintendent of the Loyal School District. The letter advised that a hearing would be held on August 29, 2022 that could result in the pupil's expulsion from the Loyal School District through her 21st birthday. The letter was sent separately to the pupil and her 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 and/or engaged in conduct while not at school that endangered the property, health or safety of others at school or under the supervision of school authorities. In addition, the letter alleged that the pupil was guilty of repeated refusal to follow the school rules. The letter specifically alleged that the pupil:

1. Made threats and or misused District technology by (1) stating that she was going to bring a knife to school; (2) sending a student a picture of a gun with the printed message “my bf got a gun”; and (3) sending a student an email that stated, “We are fighting at recess.”
2. Threatened violence in an email to [high school principal] Mr. Dieckman, stating that she would come to the school and “start throwing hands” (meaning “come to blows,” “get into a fistfight,” or some similar physical threat).
3. Misused school district technology by sending threatening emails and/or highly inappropriate, noncompliant emails by writing “...why don’t you go fucking kill yourself and while your [sic] at it go burn in fucking hell...”; (2) attacking a school administrator by writing “you’re a pervert” in an email; and (3) threatening an administrator by emailing him a one sentence note that reads: “Suspend me see what happens and [name of another student] did nothing it was all me.”

The hearing was held in closed session on August 29, 2022. The pupil’s father appeared at the hearing without counsel. The pupil did not attend the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil’s father was 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 and/or engaged in conduct while not at school that endangered the property, health or safety of others at school or under the supervision of school authorities. In addition, the board found that the pupil was guilty of repeated refusal to

follow the school rules. 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 and conclusions of law of the school board, dated September 6, 2022, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday, with an opportunity for conditional early reinstatement to a virtual school for the 2022-2023 school year. 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 several issues which require consideration. Appellant states that he is appealing due to certain "facts" that he lists in the appeal letter. The expulsion hearing was the pupil's opportunity to challenge the evidence presented by the district and to present any additional evidence that the pupil or appellant wanted the board to consider. New evidence may not be submitted for the first time on appeal. *K.F. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 739 (Aug. 2, 2016).

Appellant complains that a police officer interviewed the pupil without her parents. The pupil had no statutory or constitutional right to have her parents present during a police interview at school. *See Jeremy B. v. Waukesha Sch. Dist. Bd. of Educ.*, Decision and Order No. 395 (Aug.

16, 1999) (finding no statutory or constitutional right for student to have his parents and lawyer present during police interview); *see also Foley v. Carlsbad Mun. Sch.*, No. 1:09-CV-01147-RB-GBW, 2011 WL 13286401, at *8 (D.N.M. Jan. 24, 2011) (“Plaintiffs do not point to any clearly established constitutional right that juveniles must have their parents present during questioning by police or school officials”).

Appellant contends that the pupil’s punishment was excessive and that it was unfair to give her two punishments, suspension and then expulsion. Appellant also believes the pupil should be able to play sports. The state superintendent has the authority to “approve, reverse, or modify” the school board’s decision. Wis. Stat. § 120.13(1)(c)3. However, because the school board is in the best position to know and understand what its community requires as a response to school misconduct, the state superintendent has historically held that it would be inappropriate to second-guess the appropriateness of a school board’s determination. *See, e.g., Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Madison Metro. Sch. Dist. Bd. of Educ.*, Decision and Order No. 786 (Nov. 7, 2019). I decline to modify the expulsion here.

Appellant complains that the principal showed the pupil an inappropriate picture and did not get in trouble for it. At issue during an expulsion hearing is the pupil’s conduct, not unrelated allegations regarding the principal. Thus, this allegation is not relevant to this expulsion appeal. Appellant also complains that other students involved did not get the same punishment. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *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); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014). 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. *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); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014).

Appellant complains that the pupil's misconduct occurred because of years of bullying that the school failed to address. I have previously rejected the argument that a district's failure to protect a student from bullying requires reversal of the student's expulsion. *See Waupun Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 819 (Oct. 21, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022). If the pupil believes she was bullied, she may follow the appropriate procedures to file a complaint regarding that bullying with the district.

A statutory violation not raised by the appellant requires 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)(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., Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 24, 2022); *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. 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. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 24, 2022); *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 805 (Aug. 10, 2021). 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. 817 (Aug. 24, 2022); *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020).

In the present case, the notice of expulsion hearing did not provide the pupil with adequate notice of the allegations against her because it failed to state any date or time frame during which the alleged misconduct occurred. *See, e.g., 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 and where the misconduct occurred 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.”). In addition, the notice of expulsion hearing failed to specify whether the pupil was at school or not at school when she engaged in the alleged misconduct. The notice parrots the statutory language to allege that the pupil engaged in misconduct “while at school” and “while not at school” but fails to state which alleged conduct occurred at school and which occurred while not at school.¹ Because the notice fails to provide detailed information about the location of the pupil when she made each of the alleged threats, the notice did not adequately specify the particulars of the conduct to be considered at the hearing. *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

¹ In its response brief, the board states, citing copies of the threatening messages that were provided to the board at the expulsion hearing: “The copies clearly display the date and time at which each message was sent, and the email address of the sender and recipient. There is no question that the pupil utilized her school email account to send the messages during school hours, on a school-issued device.”

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”). Thus, because it did not specify the date of the pupil’s conduct, and because it did not specify the pupil’s location when she engaged in the misconduct, the notice of expulsion hearing did not satisfy the statutory requirement of specifying the particulars of the alleged conduct. Therefore, I am compelled to reverse the expulsion.

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). Here, as with the notice, the order failed to specify what conduct occurred at school and what conduct occurred not at school. Unlike with the notice, this does not require reversal because the notice and order cited both the statutory basis for “conduct while at school” and the basis for conduct “while not at school,” and the record supported at least one of those findings. The better practice, however, would be to specify which findings fall under which statutory basis.

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. 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).

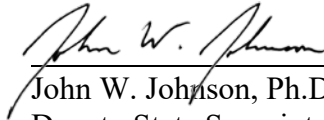
CONCLUSIONS OF LAW

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 Loyal School District Board of Education is reversed.

Dated this 6th day of December, 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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COPIES MAILED TO:

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