

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Ripon Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-20

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 Ripon Area School District Board of Education to expel the above-named pupil from the Ripon Area School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on December 20, 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 December 2, 2022, from the superintendent of the Ripon Area School District. The letter advised that a hearing would be held on December 13, 2022 that could result in the pupil's expulsion from the Ripon Area School District through age 21. The letter was sent separately to the pupil and his mother by certified mail. The letter stated that the school board would determine whether the

pupil (1) Engaged in conduct while not at school or while not under the supervision of a school authority that endangers the property, health, or safety of others at school or under the supervision of a school authority and/or; (2) Engaged in conduct while not at school or while not under the supervision of a school authority that endangers the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled. The letter specifically alleged that

On November 27, 2022, [the pupil] was part of a group of students who developed, supported, and carried out a plan to shoot a gun at the Crossroads teacher while the teacher was in the front yard of his residence for the purpose of scaring the teacher, as admitted by [the pupil].

The hearing was held in closed session on December 13, 2022. The pupil, his mother and his grandmother 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 not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority, and conduct which endangered the property, health or safety of any employee of school board member of the district in which the pupil is enrolled. The school board further found that the best interests of the district demand the pupil's expulsion. The order of expulsion containing the findings of fact and conclusions of law of the school board, dated December 16, 2022, was mailed separately to the pupil and his mother. The order stated the pupil was expelled through the age of 21, and allowed the pupil to request to complete his course work for his current first semester courses, off campus, at the sole discretion of the District

Administration. Minutes and an audio recording 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 complains that the board accepted the testimony of administration witnesses and attempts to dispute in her appeal letter some of the evidence introduced at the expulsion hearing. Arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011); *A.D. v. Silver Lake JI Sch. Dist. Bd. of Educ.*, Decision and Order No. 665 (June 28, 2010). The state superintendent’s review is based on the record of the expulsion hearing before the school board and does not consider evidence that was not introduced at the hearing. At the hearing, appellant and the pupil challenged the teacher’s testimony. The board was entitled to reach its own determination regarding the teacher’s credibility. A school board’s findings will be upheld if any reasonable view of the evidence sustains them. *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). In this case, a reasonable view of the evidence supports the

board's findings regarding the harm suffered by the teacher and others in the school community. However, as discussed below, no reasonable view of the evidence supports the allegation or finding that a gun, as opposed to a toy gun, was used.

Appellant contends that the principal, vice principal and teacher "weren't taking any of this seriously. They were laughing while questions were being asked, they were making a mockery of the proceedings." Appellant also complains that the teacher wore a track suit to the formal hearing. The audio recording of the hearing does not support the allegation that the administration failed to take the proceeding seriously. Even if true, these complaints would not be a basis for reversal of an expulsion without a specific procedural violation.

Finally, appellant suggests that the board's decision was biased and contends that "[t]he school board wasn't open to anything we said, they already made the[ir] decision before we walked in the room, only two members asked any questions." Nothing in the recording of the expulsion hearing suggests that the board had prejudged the matter or that it did not consider all the evidence presented, including evidence from appellant and the pupil. As public officials, school board members are presumed to act in accordance with the duties of their office and act fairly, impartially, and in good faith. *See State ex rel. Wasilewski v. Bd. of Sch. Dirs.*, 14 Wis. 2d 243, 266, 111 N.W.2d 198, 211 (1961); *Goodman-Armstrong Creek Sch. Dist. Bd. of Educ.*, Decision and Order No. 787 (Dec. 16, 2019); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019). The record does not contain and appellant has not provided any evidence to rebut this presumption.

However, 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)(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.

The notice of expulsion hearing in this case alleged that:

On November 27, 2022, [the pupil] was part of a group of students who developed, supported, and carried out a plan to shoot a gun at the Crossroads teacher while the teacher was in the front yard of his residence for the purpose of scaring the teacher, as admitted by [the pupil].

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. 817 (Aug. 25, 2022); *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 and does not adequately describe the conduct to be considered. For example, the notice does not name “the Crossroads teacher” and, therefore, failed to adequately describe the teacher. The notice also fails to adequately describe what the pupil did, such as driving a car by the teacher’s house, or how he participated in the “group of students who developed, supported, and carried out a plan.” Finally, the notice mischaracterizes the gun, by failing to specify that it was a toy or cap gun. 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 Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 25, 2022) (reversing expulsion based on inadequate notice where notice failed to describe how many staff pupil attacked or name the staff who were attacked); *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.”); *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”); *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”).

The school district is required to provide the pupil advance notice of the particulars of the misconduct under which it intends to proceed. The school board cannot make its finding based upon an act of misconduct for which the student did not receive notice. *C.M. v. Pulaski Comm.*

Sch. Dist. Bd. of Educ., Decision and Order No. 701 (Dec. 5, 2012). In this case, the notice and the order described “a plan to shoot a gun” but the undisputed evidence at the hearing was that the “gun” was a toy gun or a cap gun. Although there was evidence introduced that the teacher, at least initially, thought it was a real gun, there was no evidence introduced that the pupil thought the gun was anything other than a toy gun or that the pupil was involved in a plan to shoot a real gun. A toy or cap gun is materially different from a gun. A notice or finding regarding “a plan to shoot a gun” can only reasonably be understood to refer to a non-toy gun. No reasonable view of the evidence supports a finding that the pupil was involved in developing, supporting, or carrying out a plan to shoot a gun at a teacher. Because the evidence does not support a finding that the pupil engaged in the misconduct alleged in the notice of expulsion hearing, the expulsion must be reversed. *See, e.g., Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022) (reversing expulsion where undisputed evidence was that student was not at school when she engaged in the misconduct and specific grounds stated in notice were that student engaged in misconduct while at school); *Greenfield Sch. Dist. Bd. of Educ.*, Decision and Order No. 798 (Sep. 10, 2020) (reversing expulsion where undisputed evidence was that pupil possessed BB gun or airsoft gun, which did not constitute a firearm for purposes of Wis. Stat. § 120.13(1)(c)2m.).

In addition, Wis. Stat. § 120.13(1)(c)4.d. requires the notice state, “That, upon request of the pupil and, if the pupil is a minor, the pupil’s parent or guardian, the hearing shall be closed.” In this case, the notice stated, “Upon the pupil’s request, and if the pupil is a minor, upon the request of his parent(s) or guardian(s), the hearing shall be closed unless a request is made to hold the hearing in public. Unless I hear from you prior to noon on December 12, 2022, I will assume you desire the hearing to be held in closed session.” (emphasis added). The underlined

language contradicts the required statutory language and defeats the purpose of Wis. Stat. § 120.13(1)(c)4.d. by allowing a request to hold the hearing in public to trump the request of the pupil or his parents that the hearing be closed. This is additional grounds for reversal of the expulsion.

In its appeal brief, the district asserts that the “long-standing law of the State does not allow for the State Superintendent to substitute its judgment over the School Board’s decision.” To the contrary, the state superintendent has the authority to “approve, reverse, or modify” the school board’s decision. Wis. Stat. § 120.13(1)(c)3.¹ 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., Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *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).

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 the procedural errors 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).

¹ This authority was provided through the enactment of 1987 Wisconsin Act 88, after issuance of the decision in *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 321 N.W.2d 334 (Ct. App. 1982) that is quoted by the district.

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 Ripon Area School District Board of Education is reversed.

Dated this 14th day of February, 2023



Thomas G. McCarthy
Executive Director of the Office of the
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]

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