

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Slinger School District
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-14

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 Slinger School District Board of Education to expel the above-named pupil from the Slinger School District. This appeal was filed by the pupil’s parents and received by the Department of Public Instruction on June 21, 2023.

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 June 3, 2022, from the superintendent of the Slinger School District. The letter advised that a hearing would be held on June 13, 2022 that could result in the pupil’s expulsion from the Slinger 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 a school authority which endangered the property, health, or safety of others or that the pupil endangered 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 Friday, May 27, 2022 [the pupil] was in a hallway and said “I have a gun!” very audibly. Students were concerned and reported this to their teacher. The report went to the office where a lockdown of school premises was initiated. Law enforcement then became involved.

The hearing was held in closed session on June 13, 2022. The pupil’s parents 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 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 and that the pupil engaged in conduct that endangered the property, health or safety of an employee or school board member of the school district in which the pupil is enrolled. 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 the board, dated June 14, 2022, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday and that during the period of expulsion, the district will provide an online education for the pupil or assist the pupil and his parents with finding an appropriate internet-based educational option at the expense of the district, up to but not to exceed the open enrollment dollar amount per year. An audio recording of the expulsion hearing is 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 district demands the pupil’s expulsion.

The appeal letter in this case raises two issues which require consideration. First, appellants challenge the district’s failure to produce eyewitnesses at the expulsion hearing so that appellant could cross-examine those witnesses. Appellants state that they chose not to reach out to the juvenile victims and witnesses to be respectful of the witnesses and any trauma they may have experienced, and that appellants were relying on the administration to present witnesses for them to cross-examine. Appellants point to the following language in the notice of expulsion hearing:

The administration intends to present witnesses at the hearing with knowledge of the incident(s) described above. The pupil and parent(s) each may be represented by an attorney at their expense and the parties shall have the right to cross-examine witnesses and to present such evidence and witnesses as deemed appropriate.

Appellants complain that “no witnesses were presented by Slinger Middle School administration handicapping our ability to cross-examine.” To the contrary, the district presented witness testimony by Slinger Middle School Principal Kari Lutter. Principal Lutter presented documents including an incident report and student witness statements, and appellants had the opportunity to cross-examine Principal Lutter. Appellants could have challenged the method by which the statements were taken through cross-examination of Principal Lutter. If appellants wanted to

question certain witnesses, it was their responsibility to request the witnesses' presence at the expulsion hearing.

Appellants state, "The statements given by students do not provide conversational context at the time of the incident to prove there was any negative intentions by [the pupil] or if he was simply making a statement about some sort of unlocked achievement in a video game or a nerf toy gun he had. Students in this school district have a very dangerous city wide nerf gun war yearly and this was something we had recently witnessed." Appellants had the opportunity to make these arguments to the board but chose not to do so. Similarly, the pupil could have attended the hearing and could have testified regarding his intentions in making the statement. No evidence was presented at the hearing to suggest that the pupil did not make the statement. Instead, appellants apologized for it.

Even though testimony from witnesses with firsthand knowledge might provide better evidence, there is longstanding precedent that hearsay is admissible in Wisconsin expulsion proceedings. The Wisconsin Court of Appeals has held "that a student's right to due process in an expulsion hearing is satisfied even though some of the testimony presented was hearsay given by members of the school staff." *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 659, 321 N.W.2d 334, 335 (Ct. App. 1982) (reversing state superintendent's order that found hearsay inadmissible at expulsion hearing). Hearsay has historically been allowed in expulsion hearings because of an assumption that "in the absence of an allegation of bias, we can conceive of no reason why school staff would fabricate or misrepresent [hearsay witness] statements of this sort." *Id.* at 664, 321 N.W.2d at 338. "Basic fairness and integrity of the fact-finding process are the guiding stars." *Id.* at 663, 321 N.W.2d at 337 (quoting *Boykins v. Fairfield Bd. of Educ.*, 492 F.2d 697, 701 (5th Cir. 1974)). Thus, hearsay testimony may be considered sufficient evidence to

support an expulsion where factors establishing the reliability and probative value of such testimony are present. *G.H. v. Sch. Dist. of Elmbrook Bd. of Educ.*, Decision and Order No. 769 (Aug. 14, 2018). Nothing in the record here suggests that the district and police investigative reports are not reliable evidence.

Second, appellants contend that the notice of expulsion hearing was inadequate because it did not provide the specific location where the pupil's conduct was alleged to have occurred, noting "[i]t is not clear to us that this incident happened in a school or even the Village of Slinger." Among other things, the notice of expulsion hearing must state "The specific grounds, under subd. 1., 2. or 2m., and 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). 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. v. 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 and does not adequately specify the location where the alleged misconduct occurred. With respect to time and location, the notice of expulsion hearing in this case merely alleged that “[o]n Friday, May 27, 2022 [the pupil] was in a hallway” and that “[s]tudents were concerned and reported this to their teacher. The report went to the office where a lockdown of school premises was initiated.” This does not constitute adequate notice. With respect to location, the notice failed to state where the hallway where the pupil made the statement was, or even if it was at school. 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 Ripon Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 826 (Feb. 14, 2023) (reversing expulsion based on inadequate notice where notice stated date but not time of alleged misconduct); *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” and failed to state the time and location in school of the alleged misconduct occurred); *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, assaulting [sic] another student, and violating existing pre-expulsion conditions” and did not state time and location in school alleged misconduct occurred); *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 failure 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.”).

A final issue merits mention. The notice of expulsion hearing and the board’s conclusions state two bases for expulsion:

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, OR

...

the pupil endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled.

Only the first is a ground for expulsion under Wis. Stat. § 120.13(1)(c)1. Wis. Stat. § 120.13(1)(c)1. also allows for expulsion where a school board “finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which ... endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled.” (emphasis added). As already discussed, the notice failed to adequately specify the time and location of the alleged misconduct. However, the evidence at the hearing indicated that the misconduct occurred at school. There was no evidence in the

record that the pupil engaged in misconduct while not at school and not under the supervision of a school authority. However, because one ground for expulsion was accurately stated in the notice and a reasonable view of the evidence supported the board's finding that the pupil engaged in conduct while at school which endangered the property, health or safety of others, the expulsion would not have been reversed on this basis. Reversal of the expulsion is required for the reasons discussed on pages 6-7; specifically, the district's failure to adequately specify in the notice of expulsion hearing the time and location of the alleged misconduct.

In reviewing the record in this case, I find that the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion. 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).

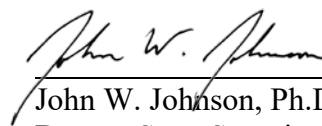
CONCLUSIONS OF LAW

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 Slinger School District Board of Education is reversed.

Dated this 9th day of August, 2023



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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