

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of



by Racine Unified School District  
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-20

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**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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on November 29, 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 hearing conducted by the independent hearing officer on behalf of the school board. The state superintendent's review authority is specified in Wis. Stat. § 120.13(1)(e).

**FINDINGS OF FACT**

The record contains a letter entitled “Notice of Expulsion Hearing,” dated November 8, 2023, from a principal in the Racine Unified School District. The letter advised that a hearing would be held before an independent hearing officer on November 15, 2023 that could result in the pupil’s expulsion from the Racine Unified School District through his 21st birthday. The

letter was sent separately to the pupil and his mother by U.S. 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 and 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 others at school or under the supervision of a school authority. The letter specifically alleged that:

[The pupil] is a 16 year old Junior at Park High School. Student A had pictures of Student B on his phone. Student B had told him to delete them and decided to confront him with her friends on Monday 10/30 during lunch. When they confronted him, Student A deleted the pictures on his phone in front of Student B, but [the pupil] took his phone and threw it in the river anyways, to “ensure he didn’t recover them.” Student B was told by others that he had another phone that contained the pictures and got worried they would be shared publicly. Throughout the next day and a half, Student B plotted with Student C through Snapchat messages to confront Student A and possibly steal his phone for the pictures. There are extensive messages between the group chat that talked about this including involving Students D, E, and F. During lunch on 11/1, Student A got jumped by [the pupil] and Students E and F and was left bleeding on the ground with a bloody nose and cut up face. Throughout the investigation [the pupil] and students B, C, E, and F all were plotting and planning to tell the same story, including a story written up by Student E which they all were supposed to tell the principals. Additionally, a map of the river during their planning was provided to show where Student A usually went for lunch (where to find him). There are other messages that provide insight to the planning, the lying, and the scheming of the incident.

The hearing was held before an independent hearing officer on November 15, 2023. The pupil, his mother and his stepfather 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.

The hearing officer 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 while not at school or while not under the supervision of a school authority which

endangered the property, health, or safety of others. The hearing officer found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact of the hearing officer, dated November 15, 2023, was mailed separately to the pupil and his mother. The order stated the pupil was expelled through the end of the 2024-2025 school year, with the possibility of early reinstatement no earlier than the start of the second semester of the 2023-2024 school year to a comprehensive high school. The expulsion order issued by the independent hearing officer was reviewed and affirmed by the school board on November 20, 2023, and the school board's report of review dated November 20, 2023 was mailed separately to the pupil and his mother. An audio recording of the expulsion hearing is 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 district demands the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellant states that “my son is a good and likable student with almost a 3.0 GPA (Business student).” Whether the pupil is a good student is irrelevant to whether he engaged in conduct for which the Wisconsin statutes allow expulsion. In this case, the pupil admitted that he threw another student's phone in the river and that he fought with the student. Therefore, the evidence

presented at the hearing was sufficient to support the findings that the pupil engaged in those acts.

Second, appellant contends that the pupil's conduct occurred because he was trying to protect a female student from a sexual predator after the principal failed to protect her after she reported the situation to the principal. Although the independent hearing officer and school board may have considered the alleged reason for the pupil's misconduct as mitigating evidence in determining whether to expel and for how long, I cannot conclude that the decision to expel the pupil was unreasonable.

Finally, appellant contends that although the evidence presented at the hearing warranted suspension, it was not sufficient to warrant expulsion. The state superintendent has the authority to "approve, reverse, or modify" the school board's decision. Wis. Stat. § 120.13(1)(e)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 chosen not 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). I decline to overrule the determination in this case that expulsion is an appropriate response to the pupil's actions.

However, a statutory violation not raised by appellants 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)(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., Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug.

25, 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)(e)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. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 25, 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); *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. 817 (Aug. 25, 2022); *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Eric Paul H. by Mishicot Sch. Dist. Bd. of Educ.*, Decision and Order No. 459 (Mar. 11, 2002).

In the present case, the notice of expulsion hearing failed to adequately specify the location of the alleged misconduct, or even whether it occurred at school or not at school. It also failed to adequately describe the specific conduct the pupil engaged in on November 1. With respect to the October 30 allegation, the notice states solely that after Student B and her friends confronted Student A “on Monday 10/30 during lunch...[the pupil] took his phone and threw it in the river anyways.” This does not constitute adequate notice as to the location of the alleged

misconduct. The notice fails to specify where the confrontation took place, what river is being referred to, whether the river is on or next to school grounds or not, whether the confrontation took place near “the river” or whether the pupil went there after the confrontation to dispose of the phone or any specific location near the unnamed river from which the phone was thrown. With respect to the November 1 allegation, the notice states, “During lunch on 11/1, Student A got jumped by [the pupil] and Students E and F and was left bleeding on the ground with a bloody nose and cut off face.” This fails to adequately describe the location where the pupil “jumped” Student A and what specifically the pupil did to Student A. Later, the notice states “[a]dditionally, a map of the river during their planning was provided to show where Student A usually went for lunch (where to find him).” This does not solve the location inadequacy issue: it fails to state that Student A was where the others expected him to be when they looked for Student A, nor does it adequately describe Student A’s usual lunch location. The map was not attached to the notice of expulsion hearing.

Finally, the notice states, “[t]hroughout the investigation [the pupil] and students B, C, E, and F were all plotting and planning to tell the same story, including a story written up by Student E which they all were supposed to tell the principals.” The notice does not state the location where the plotting and planning allegedly took place. Especially because the notice alleged the pupil engaged in expellable conduct both “while at school or while under the supervision of a school authority” and “while not at school or while not under the supervision of a school authority,” it is essential that the notice be clear as to which allegations it alleges occurred at school and which it alleges occurred while not at school. In addition, because the notice alleges expellable conduct by the pupil “while not at school or while not under the supervision of a school authority,” the notice also must be clear as to the location of the alleged

victim because that ground for expulsion requires that the endangerment caused by the pupil while not at school endangered another who was at school or under the supervision of a school authority. 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 Slinger Sch. Dist. Bd. of Educ.*, Decision and Order No. 839 (Aug. 9, 2023) (reversing expulsion for inadequate notice as to time and location where notice alleged “[o]n Friday, May 27, 2022 [the pupil] was in a hallway and said ‘I have a gun!’” and “a lockdown of school premises was initiated”); *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, assulting [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.”).

Several other issues merit mention. First, the notice of expulsion hearing states that the pupil “has been referred to an Independent Hearing Officer of the Racine Unified School District for expulsion proceedings pursuant to Section 120.13(1)(c) of the Wisconsin Statutes.” However, Wis. Stat. § 120.13(1)(e), not (c), is the statutory provision applicable to expulsion proceedings before an independent hearing officer. Second, like the notice, the expulsion order fails to specify the location where the pupil’s expellable conduct occurred, making it impossible to determine whether it occurred “while at school or while under the supervision of a school authority” and/or “while not at school or while not under the supervision of a school authority.” As a result, the order fails to make clear the factual findings made by the independent hearing officer that support the cited grounds for expulsion under Wis. Stat. § 120.13(1)(c)1 and whether those findings are supported by a reasonable view of the evidence introduced at the hearing. Third, the findings of fact and conclusions of law stated by the hearing officer orally at the conclusion of the hearing did not match those in the written order. The written order contains specific factual findings regarding students other than the pupil that the hearing officer did not make orally. After orally noting the two grounds for expulsion alleged by the school



administration, the hearing officer verbalized only one ground for expulsion under Wis. Stat. § 120.13(1)(c)1: “I find that the student did engage 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 others at school or under the supervision of a school authority.” However, the written order for expulsion finds “[t]hat based on the conduct described in paragraph 4 above, and from the evidence presented at the hearing, 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 while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others.” Fourth, the latter ground stated in the written order is not a basis for expulsion under Wis. Stat. § 120.13(1)(c)1. because it fails to find that the pupil’s conduct while not at school or while not under the supervision of a school authority endangered the property, health or safety of others at school or under the supervision of a school authority. Fifth, even assuming that this omission is a typographical error (given that the hearing officer accurately stated this ground for expulsion when stating his findings orally after the expulsion hearing), the order’s findings of fact simply pastes the particulars of the pupil’s alleged misconduct contained in the notice of expulsion hearing and fails to find that Student A’s property, health or safety was endangered while at school or under the supervision of a school authority. As already noted, the notice and evidence at hearing was not clear regarding where the alleged misconduct took place and whether that was at school or not at school. Regardless, especially for the November 1 incident involving an altercation between the pupil and Student A, the two students must have both been at school or both been not at school and this ground for expulsion could not apply. Because the expulsion must be reversed because the notice of

expulsion hearing failed to adequately state the particulars of the pupil's alleged misconduct, I need not determine here whether any or all of these errors are independent bases for reversal.

In reviewing the record in this case, I find that the school district failed to 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).

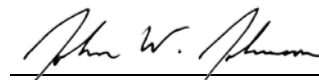
### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board 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 Racine Unified School District Board of Education is reversed.

Dated this 18th day of January, 2024



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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]

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**COPIES MAILED TO:**

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