Decision and Order No.: 846

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by Northland Pines School District Board of Education	DECISION AND ORDER Appeal No.: 23-EX-21

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 Northland Pines School District Board of Education to expel the above-named pupil from the Northland Pines School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on November 30, 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 Expulsion Hearing," dated October 18, 2023, from the district administrator of the Northland Pines School District. The letter advised that a hearing would be held on October 24, 2023 that could result in the pupil's expulsion from the Northland Pines 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. The letter specifically alleged that "on October 13, 2023, [the pupil] was found to be under the influence of THC at school, was found to be in possession of THC at school, and was found to have knowingly shared THC with another student at school."

The hearing was held in closed session on October 24, 2023. The pupil and his mother appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's attorney 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 did engage 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 interest of the school demands the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated October 26, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday, with the possibility of early reinstatement as soon as October 25, 2023 if he met certain conditions. Minutes of the school board expulsion hearing and a transcript of the 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 district demands the pupil's expulsion.

The appeal in this case raises five issues which require consideration. First, appellant contends that the district improperly refused to provide testimony regarding the nature of the pupil's questioning by law enforcement, making a determination regarding the voluntariness of his statements impossible. Appellant cites criminal caselaw to assert that any involuntary statement by a juvenile used to incriminate that juvenile is unconstitutional under the United States and Wisconsin Constitutions. At the hearing, appellant argued that the pupil's incriminating statements to the school resource officer were not voluntary and, therefore, should not be used against him. It is within the board's discretion to give weight to the evidence and arguments, as it deems appropriate, and to judge the credibility of witnesses. *David S. v. Elk Mound Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 524 (Aug. 26, 2004). Furthermore, the pupil also made incriminating statements to the principal, before speaking to the school resource officer. As the district notes in its response, no evidence was presented at the hearing to suggest that the principal coerced the pupil's admissions. Courts have held that *Miranda* warnings are not required in similar situations. *See Betts v. Bd. of Educ. of City of Chicago*, 466 F.2d 629, 631 n.1. (7th Cir. 1972) (rejecting argument that failure of school principal's administrative assistant and fire department official to give *Miranda* warnings prior to interrogation of student violated due process). Contrary to appellant's assertion, it was not unreasonable for the board to conclude that the pupil's admissions were voluntary.

Second, appellant contends that the district failed to meet its burden to prove the allegations by a preponderance of the evidence. Appellant states that the only evidence produced by the district are statements by the pupil himself and by one other student who was also facing

disciplinary action, and that the district admitted it had no physical evidence supporting its allegations. The pupil's admissions to the principal are sufficient evidence to support the board's finding. Physical evidence is not required. There is no right to cross-examine other students accusing the pupil of the misconduct if they are not called as witnesses. *J.M. v. Mercer Sch. Dist. Bd. of Educ.*, Decision and Order No. 514 (May 7, 2004).

Third, appellant contends that the district produced no evidence that the interest of the school demands expulsion, as required by Wis. Stat. § 120.13(1)(c)1. Arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011). A school board's findings will be upheld if any reasonable view of the evidence sustains them. *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 board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011); *G.J. v. Medford Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 683 (May 17, 2011); *D.S. v. Cedar Grove-Belgium Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 552 (July 11, 2005) (noting that pupil chose to engage in misconduct in a very public way by appearing at dance after using marijuana).

In this case, there was evidence that the pupil possessed THC at school, was under the influence of THC at school and shared THC with another student at school. State superintendents have repeatedly upheld expulsions based on possession of marijuana, even in small amounts. *Two Rivers Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No. 835 (July 21, 2023); *Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *N.P. v. Wisconsin Dells Sch. Dist. Bd. of Educ.*, Decision and Order No. 719 (June 23, 2014); *Joshua S. v. Beloit-Turner Sch. Dist. Bd. of Educ.*, Decision and Order No. 307 (Jan. 14, 1997). Merely being in possession of drugs at school endangers the health, safety and welfare of others. *Two Rivers Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No. 835 (July 21, 2023); *Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *B.S. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 626 (July 11, 2008). Thus, it was not unreasonable for the board to determine that the interests of the school demand expulsion.

Fourth, appellant contends that the district failed to keep written minutes of the hearing, as required by Wis. Stat. § 120.13(1)(c)3. To the contrary, the record contains written minutes of the expulsion hearing, in addition to an audio recording of the hearing. There is no requirement that a stenographer or court reporter be present at the hearing for the purpose of creating a transcript.

Fifth, appellant contends that because the pupil has a constitutional right to attend public school, he should have been afforded greater procedural protections than were offered in this case. Appellant cites *Vincent v. Voight*, 2000 WI 93, to argue that strict scrutiny should apply but that case does not support that proposition. *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 796 (July 1, 2020). The pupil further contends that if strict scrutiny applies, "the absence of a

transcript, the District's lack of evidence that the interest of the school demands expulsion, and the District's refusal to respond to questioning regarding [the pupil]'s interrogation render the District's expulsion practices, as applied to [the pupil], unconstitutional." I have already addressed these arguments outside the constitutional lens. The state superintendent's review is primarily limited to ensuring accordance with the due process requirements contained in Wis. Stat. § 120.13(1)(c). *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W.2d 334, 339 (Ct. App. 1982); *Madison Metro. Sch. Dist. v. Wis. Dep't of Public Instruction*, 199 Wis. 2d 1, 16-17, 543 N.W.2d 843, 849-50 (Ct. App. 1995).

In addition to ensuring compliance with the due process requirements in Wis. Stat. § 120.13(1)(c), the state superintendent must ensure that basic due process was afforded in the expulsion hearing. *See Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820, (Nov. 15, 2022); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *P.L.Y. by the Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* Decision and Order No. 182 (Oct. 9, 1991) (state superintendent must address constitutional error). The expulsion statute covers many basic due process rights, including the right to counsel, but the statute is not an exhaustive list of fundamental due process rights. For example, the statute does not specify that pupils have a right to be heard, a fundamental requisite of due process. *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *see also Milwaukee Pub. Schs. Bd. of Sch. Dirs.*, Decision and Order No. 751 (Sep. 5, 2017). However, courts and previous state superintendents have rejected appellant's argument that due process in a student expulsion hearing must take the form of a judicial or quasi-judicial trial, and have held that the due process required in an expulsion hearing cannot be equated to that required in a criminal trial or juvenile delinquency hearing. *See, e.g., Linwood v. Board of Educ.*, 463 F.2d 763, 770 (7th Cir. 1972); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order

No. 795 (July 1, 2020). "As long as the student is given notice of the charges against him, notice of the time of the hearing and a full opportunity to be heard, the expulsion procedures do not offend due process requirements." *Remer v. Burlington Area Sch. Dist.*, 286 F.3d 1007, 1010–11 (7th Cir. 2002) (quoting *Betts v. Bd. of Educ.*, 466 F.2d 629, 633 (7th Cir.1972)).

Appellant further contends that "permission of extensive hearsay evidence serves really no purpose other than to water down the evidence, not to avoid an unnecessary fiscal or administrative burden on the government." 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.*, 107 Wis. 2d at 659, 321 N.W.2d at 335 (reversing state superintendent's order that had found hearsay inadmissible at expulsion hearing). I do not have authority to overrule that decision.

In this case, the facts introduced at the expulsion hearing, including the principal's testimony that the pupil admitted to possessing, using and being under the influence of THC at school, support the pupil's expulsion under Wis. Stat. § 120.13(1)(c)1. The district's choice not to call the school resource officer as a witness did not deprive the pupil of a full opportunity to be heard. Although the pupil chose not to testify, he was offered the opportunity to do so. The pupil's attorney cross-examined the principal and made extensive arguments to the board. The pupil's admissions, as testified to by the principal, are sufficient basis for expulsion under the Wisconsin statutes and the Wisconsin Constitution. *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and

Order No. 796 (July 1, 2020). Because appellant's constitutional arguments do not support reversal of the expulsion under any standard of review, I need not determine the appropriate standard of review. *Madison Metro. Sch. Dist. Bd. of Educ.*, Decision and Order No. 832 (July 6, 2023).

However, a statutory violation not raised by 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.*, *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 "[t]he 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. The notice of expulsion hearing in this case merely alleged that the pupil engaged in expellable conduct because "on October 13, 2023, [the pupil] was found to be under the influence of THC at school, was found to be in possession of THC at school, and was found to have knowingly shared THC with another student at school." 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); *C.M. v. Pulaski Comm. Sch. Dist. Bd. of Educ.*, Decision and Order No. 701 (Dec. 5, 2012); *A.S. v. Milwaukee Public Sch. Dist. Bd. of Educ.*, Decision and Order No. 674 (Dec. 21, 2010). 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. Mishicot 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 specify the location in the school where the alleged misconduct occurred. For example, the notice does not state the time(s) or location(s) at school that the pupil was allegedly under the influence of THC, possessed THC or shared THC with another student. 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 Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 845 (Jan. 18, 2024) (reversing expulsion for inadequate notice as to location where notice failed to specify where confrontations took place or name the river in which phone was thrown); *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.").

The notice was also inadequate in another respect. Wis. Stat. § 120.13(1)(c)4.f. requires that the notice of expulsion hearing state "[t]hat the school board shall keep written minutes of the hearing." The notice in this case failed to comply with this requirement.

Another issue not raised by appellant must be addressed. An expulsion order or record must indicate that the board found the pupil guilty of the alleged misconduct, that the conduct meets a statutory standard for expulsion and that the interests of the school demand expulsion. *See, e.g.*, *Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 805 (Dec. 7, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019). Although the hearing record contains information regarding the misconduct presented to the board, there is no indication in the expulsion order or the audio recording of the hearing as to what conduct the board *found* that the pupil engaged in to meet the statutory grounds for expulsion. This constitutes reversible error. *Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 805 (Dec. 7, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019); *James R. v. West Bend Sch. Dist. Bd. of Educ.,* Decision and Order No. 396 (Aug. 17, 1999); *Douglas G. v. New London Sch. Dist. Bd. of Educ.*, Decision and Order No. 228 (April 29, 1994). Although the hearing record indicates evidence was presented to the board regarding the student's misconduct, neither the order nor the record indicates what conduct the board found the student actually engaged in that meets the statutory grounds for expulsion. *Goodman-Armstrong Creek Sch. Dist. Bd. of Educ.*, Decision and Order No. 787 (Dec. 16, 2019); *James R. by West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 396 (Aug. 17, 1999) (p. 4). The entire findings of fact in the expulsion order were:

1. [The pupil] is presently enrolled in the Northland Pines High School in the 9th grade.

2. The pupil engaged in the following conduct:

   The Board finds, from the evidence produced at the hearing, that the pupil was guilty of engaging in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others.

3. The interest of the school demands the pupil's immediate expulsion.

The board made no specific findings about the student's conduct and simply recited the statutory language. This problem is not cured by the record of the hearing because the board made no findings of fact on the record. Following deliberations, the board passed a motion that "pursuant to district policy number 5530, the safety of the students in the Northland Pines School District demands that the interests of the Northland Pines School District that [the pupil] be expelled through his 21st birthday pursuant to option B [which allowed for early reinstatement with certain conditions]." No other findings of fact or conclusions of law were stated on the record at the expulsion hearing.

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.

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)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [redacted] by the Northland Pines School District Board of Education is reversed.

Dated this 26th day of January, 2024

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]

Scott Foster
District Administrator
Northland Pines School District
1800 Pleasure Island Road
Eagle River, WI 54521

COPIES MAILED TO:

Paige Metzman
Assistant State Public Defender
500 N. 3rd St. Suite 310
Wausau, WI 54403

Tony J. Renning
Renning, Lewis & Lacy, s.c.
43 West 6th Avenue
Oshkosh, WI 54902