

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Mauston School District
Board of Education

DECISION AND ORDER

Appeal No.: 24-EX-09

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 Mauston School District Board of Education to expel the above-named pupil from the Mauston School District. This appeal was filed by the pupil’s attorney and received by the Department of Public Instruction on June 24, 2024.

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) and has been delegated to me under Wis. Stat. § 15.02(4).

FINDINGS OF FACT

The record contains a letter entitled “Notice of Pupil Expulsion Hearing,” dated May 14, 2024, from the district administrator of the Mauston School District. The letter advised that a hearing would be held on May 21, 2024 that could result in the pupil’s expulsion from the Mauston 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 Tuesday, April 30, 2024, [the pupil] had taken a photo of another student in the bathroom off of the Mauston High School Commons, and sent it to a group of students via a social media app, while in school and while under the supervision of school authorities.

The hearing was held in closed session on May 21, 2024. The pupil and his parents 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 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 May 23, 2024, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until he reaches age 21. The order allowed the pupil to complete his coursework for the remainder of the 2023-2024 school year off-campus and stated that the district would provide him with educational support through Lemonweir Academy Night School for the 2024-2025 school year. The order allows the pupil to apply for early readmittance to Mauston High School, iLEAD Charter, or Lemonweir Academy for the 2025-2026 school year subject to certain conditions. Minutes of the school board expulsion hearing and an audio recording of the 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 district demands the pupil’s expulsion.

The expulsion must be reversed because 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. 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)(c)4.a. The notice of expulsion hearing in this case merely alleged that “[o]n Tuesday, April 30, 2024, [the pupil] had taken a photo of another student in the bathroom off of the Mauston High School Commons, and sent it to a group of students via a social media app.” 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. *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). 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 alleged misconduct. With respect to time, the notice of expulsion hearing in this case alleged that on Tuesday, April 30, 2024, the pupil took a photo of another student and sent it to a group of students. Because the notice failed to specify the time of the misconduct, it does not constitute adequate notice. With respect to the description of the misconduct, the notice failed to provide sufficient information to alert the pupil as to the problem with the photo. For example, the notice failed to state that the subject of the photograph was partially unclothed and using the bathroom facilities. 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”); *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 and failed to adequately describe the conduct to be considered where notice alleged “[o]n 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]”); *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.”); *Lake Geneva-Genoa City Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 785 (Oct. 1, 2019) (reversing expulsion where notice of expulsion hearing alleged student “came to school under the influence of a substance”); *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”); *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 description of 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.”).

In addition to failing to adequately state the particulars of the pupil’s alleged conduct, the notice also failed to include the required language that “if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil’s parent or guardian may appeal the school board’s decision to the department.” Wis. Stat. § 120.13(1)(c)4.h. (emphasis added). In the present case, the pupil is a minor but the notice failed to notify the pupil’s parents of their right to appeal and stated only “[i]f the pupil is expelled by the School Board, the pupil may appeal the School Board’s decision to the Department of Public Instruction.” The district should ensure that notices sent to minor pupils include the statutorily-required language.

Appellant contends there was insufficient evidence to support the allegation that the pupil took a picture of another student in the school restroom on April 30, 2024. Specifically, appellant notes that the allegations suggest the pupil distributed the picture via Snapchat but the pupil provided evidence that Snapchat had not been installed on his phone since December 30, 2023, months before the incident occurred. 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). 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). Because this case must be reversed for failure to include the particulars of the alleged misconduct in the notice of expulsion hearing, I need not review whether a reasonable view of the evidence introduced at the hearing would have sustained the board's findings.

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. This decision does not condone the alleged 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).

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 Mauston School District Board of Education is reversed.

Dated this 22 day of August 2024



Sachin Chheda
Executive Director, Office of State Superintendent
Department 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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