

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T [REDACTED] R [REDACTED]</p> <p>by Nicolet School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 13-EX-05</p>
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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)(c) and Wis. Admin. Code PI ch. 1 from the order of the Nicolet School District Board of Education to expel the above-named pupil from the Nicolet School District. This appeal was filed by the pupil's parent and received by the Department of Public Instruction on October 25, 2013.

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). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated October 9, 2013, from the district administrator of the Nicolet School District. The letter advised that a hearing would be held on October 14, 2013, that could result in the pupil's expulsion from the Nicolet School District through up to the pupil's 21st birthday. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil engaged in the following behavior:

You met two adult females at Nicolet High School at the end of the day. You reentered the building with the two females and identified and approached a Nicolet male student who you said made a threat towards you. The two adult females engaged in contact with the male student and the police were called.

The hearing was held in closed session on October 14, 2013. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 interests of the school demand the student's expulsion.

By a letter dated October 21, 2013, the district provided notice that a second expulsion hearing would be held on October 28, 2013. The second letter was mailed separately by certified mail to the pupil and her parents. The second letter summarized the findings made by the school

board in the October 14, 2013 session. The letter also notified the pupil and her parents that the school board would consider additional information discovered after the October 14, 2013 session.

The second hearing was held in closed session on October 28, 2013. The pupil and her parents again appeared at the hearing without counsel. At the hearing, the school district administration presented additional evidence regarding the open enrollment implications of the pupil's expulsion and conditions for early reinstatement. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 5, 2013, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through September 1, 2019. The order for expulsion also contained conditions of early reinstatement. Minutes of the school board expulsion hearing, exhibits entered into evidence, and a transcript of the hearing are part of the record.

DISCUSSION

School districts are limited-purpose municipal corporations. As a result, a school district only has the powers specifically conferred, or necessarily implied from, statute. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). Pursuant to Wis. Stat. § 120.13(1)(c), a school board has the power to expel a pupil based on certain categories of offenses. The statute also establishes specific procedures that a school board must follow when it proposes to expel a pupil.

Upon receipt of an expulsion order appeal, the state superintendent's scope of review is limited to ensuring that, among other things, the school board complied with the provisions of Wis. Stat. § 120.13(1)(c). *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982); *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). Therefore, in reviewing the present appeal, the state superintendent must ensure 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 was satisfied that the interests of the school district demand the pupil's expulsion.

In appealing the expulsion order, the pupil's parent raises three issues. First, the appellant alleges that school board's decision was unjust. It is not within the state superintendent's purview to assess whether or not the school board's decision was just. For example, the state superintendent has held in prior decisions that the state superintendent will not review whether an expulsion is excessively harsh. *Kelly B. by the School Dist. of Three Lakes*, (100) Aug. 23, 1982; *Brad O. by the Madison Metropolitan School Dist.*, (246) Mar. 16, 1995. Rather, the state superintendent's review is primarily limited to ensuring that the procedural requirements of Wis. Stat. § 120.13(1)(c) are complied with. *Alec J. by the Hartford Jt. #1 School Dist.*, (405) Jan. 3, 2000; *Laura S. by the Viroqua Area School Dist.*, (410) March 31, 2000; *J.B. by the Milwaukee School Dist.*, (566) Feb. 16, 2006. As such, school boards are afforded wide latitude in determining whether an expulsion is an appropriate response to alleged conduct. There is evidence in the record that the pupil did not have prior disciplinary problems, that the school's policy provides a range of responses to such behavior, and that other individuals were also culpable. However, it is not the state superintendent's role to second guess the school board, even if the state superintendent may have made a different decision than the school board.

Second, the appellant alleges that a second pupil initiated the incident that led to the expulsion. The state superintendent has consistently held that a school board's findings will be upheld if any reasonable view of the evidence sustains them. *See e.g., Nichole G. by the Ashland School Dist.*, (390) July 1, 1999; *Nathan by the Delevant-Darien School Dist.*, (391) July 23, 1999. The school board found that the pupil engaged in conduct while at school which endangered the property, health, or safety of others. There is ample evidence in the record to support this conclusion, including testimony by administrators, witness statements, and a detailed description of video surveillance. Therefore, it was reasonable for the school board to find that the pupil engaged in conduct while at school which endangered the property, health, or safety of others.

Finally, the appellant asserts that the school district should have notified the parents about a precipitating incident, which would have prevented the expulsion incident from occurring. While this may be true, the expulsion statute simply does not require this type of notification. As such, this is not a basis to overturn the school board's decision.

In reviewing the entire record in this case, including written materials submitted by the parties, I find the school district did comply with all of the statutory requirements. As a result, I must affirm the school board's expulsion decision.

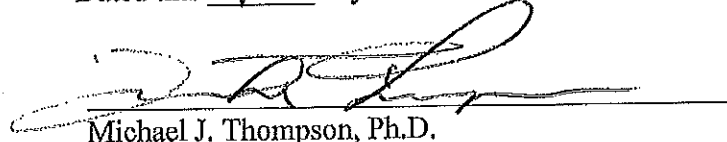
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T [REDACTED] R [REDACTED] by the Nicolet School District Board of Education is affirmed.

Dated this 17th day of December 2013



Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

Parties to this appeal are:



Robert Kobylski
District Administrator
Nicolet School District
6701 N Jean Nicolet Rd
Glendale WI 53217-3799

APPEAL RIGHTS

Wis. Stats. § 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 § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:



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