

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of A [REDACTED] M [REDACTED] by Nicolet UHS School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 13-EX-12</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) from the order of the Nicolet UHS School District Board of Education to expel the above-named pupil from the Nicolet UHS School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 5, 2013.

In accordance with the provisions of Wis. Admin. Code Ch. 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 23, 2013, from the district administrator of the Nicolet UHS School District. The letter advised that a hearing would be held on October 31, 2013 that could result in the pupil's expulsion from the Nicolet UHS School District through 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 under the supervision of school authority which endangered the property, health, or safety of others and that the student knowingly conveyed or caused to be conveyed any threats or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives. The letter specifically alleged that on or about October 18, 2013, the pupil made a written bomb threat at Nicolet High School which stated, "3 IEDs will detonate by 9:00 a.m."

The hearing was held in closed session on October 31, 2013. The pupil's father appeared at the hearing without counsel. The pupil did not appear. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's father 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 and did convey a threat to destroy school property with explosives. The school board further found that the interests of the school demand the student's expulsion. 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 his parents. The order stated the pupil was expelled through March 13, 2019. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing and a transcript of the hearing are part of the record.

DISCUSSION

School districts are limited-purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited to that set out in § 120.13(1)(c). In *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). It is, therefore, incumbent upon the state superintendent in reviewing an expulsion decision to 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 is satisfied that the interests of the school district demand the pupil's expulsion.

The appeal letter in this case raises one issue which requires consideration. The pupil's mother asserts that her son suffers from an anxiety disorder and was humiliated by his teacher. She applied for special education services for her son on October 23, 2013. However, her son had never previously received special education services nor had they ever applied for them on his behalf.

The state superintendent has long held that an expulsion appeal is not the proper forum to address compliance with special education laws. *Ernesto G. by the Waukesha School Dist.*, (200) Dec., 14, 1992 (p. 5), *Jason G. by the Greenfield School Dist.*, (364) June 12, 1998. At the time of the incident in question, he was not a special education student. This case has been simultaneously referred for consideration of any violations of special education laws.

Wis. Stat. § 120.13(1)(c) specifically provides that expulsion is a viable outcome where a school board finds "that a pupil knowingly conveyed or caused to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives . . . and is satisfied that the interest of the school demands the pupil's expulsion." The school board has discretion in how to handle such matters and did not act outside its discretion.

In reviewing the record in this case, I find the school district complied with all with all of the procedural requisites. I, therefore, affirm this expulsion.

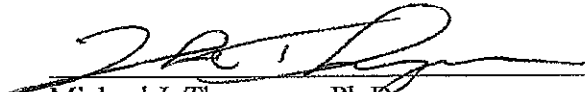
CONCLUSIONS OF LAW

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

ORDER

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

Dated this 31st day of Jan., 2014


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

APPEAL RIGHTS

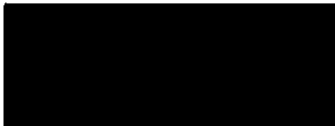
Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:



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