

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>I ■■■■ B ■■■■</p> <p>by Nicolet UHS School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 13-EX-13</p>
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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 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 18, 2013.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), this Decision and Order is confined to a review of the record of the school board hearing. The School District filed a brief on January 27, 2014. The pupil did not file a brief. The state superintendent's review authority is specified in § 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 28, 2013, from the district administrator of the Nicolet UHS School District. The letter advised that a hearing would be held on November 5, 2013 that could result in the pupil's expulsion from the Nicolet UHS 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 under the supervision of school authority which endangered the property, health, or safety of others and that the pupil knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made to destroy school property by means of explosives. The letter specifically alleged that on or about October 16, 2013, the pupil made a written bomb threat at Nicolet High School.

The hearing was held in closed session on November 5, 2013. The pupil and his mother and grandmother appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his representatives 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 and that the pupil did knowingly convey a threat or false information concerning an attempt to destroy school property by explosives. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 7, 2013, was mailed separately to the pupil and his parents.

The order stated the pupil was expelled through his 21st birthday. Minutes of the school board 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 Wis. Stat. § 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 expulsion decision, 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 is satisfied that the interests of the school district demand the pupil's expulsion. *Madison Metropolitan School District v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The appeal letter in this case raises two issues which require consideration. First, the pupil asserts that expulsion violates his constitutional right to a public education. Wis. Stat. § 120.13 has long been held to be an exception to Article X, section 3 of the Wisconsin Constitution. As held in *Susan Marie H. by the Kenosha Unified School Dist.*, (157) June 28, 1988 (p.9), "Since the right to education is a constitutional right, due process must be complied with" when infringing upon that right. "There must be sufficient notice, an opportunity for hearing, the right to be represented by counsel, etc." Here, like in *Susan Marie H., Id.*, there is

no dispute that the due process requirements were met. See also *Ricardo S. by the School Dist. Of Wisconsin Rapids*, (145) Sept. 5, 1986 (p.7).

The pupil also seems to allege that the expulsion until his 21st birthday is unduly harsh and should be shortened. The decision to expel a student and for how long are within the complete discretion of the school board as long as it complies with all the procedural requirements of § 120.13(1)(c) Stats. See *Ricardo S.*, at pg. 8. Again, there is no dispute that the procedural requirements have been met. Bomb threats have been treated as extremely serious. Section 120.13(1)(c) lists it as its own reason to expel a pupil. There is a long history of the superintendent upholding expulsions based on bomb threats. See *Bradley B. by the Spooner School Dist.*, (107) Feb. 15, 1983, and *Glenn P. by the Wauwatosa School Dist.*, (135) Feb. 24, 1986. Further, it is disturbing that the pupil here did not, at any time that day, mitigate the damage by admitting the note was written by him and there was not a real threat despite many opportunities. Although the pupil has never before been in trouble with the law, he has a significant history of disciplinary problems in his short stint at Nicolet High School. He has been given many chances.

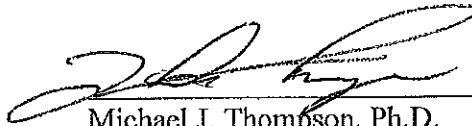
CONCLUSIONS OF LAW

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 of the procedural requirements of §120.13(1)(c).

ORDER

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

Dated this 14th day of February, 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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