

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T ■ R ■</p> <p>by Adams-Friendship Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 14-EX-08</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 Adams-Friendship Area School District Board of Education to expel the above-named pupil from the Adams-Friendship Area School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on July 14, 2014.

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**

On May 15, 2014, three K9 units from the Adams County Sheriff's Office conducted a search of the Adams-Friendship Middle School. Whenever a "hit" occurred on a locker, it was searched along with the locker on either side of it. As the result of a hit, the pupil's locker was searched. In the pupil's backpack, law enforcement and school staff discovered a variety of items, including: a handlebar cushion which concealed a small bottle containing 11 prescription Bupropion pills and two cigarette butts; an empty, single serve bottle of vodka; a matchbook; a bottle containing a liquid from science class; an e-cigarette; a hunting knife with a three inch blade; a lighter; a cigarette butt; and a cigar cutter. Prior to being questioned by the school resource officer, the pupil emptied his pockets, which contained a pocket knife. Due to his possession of a controlled substance and a weapon, the pupil was suspended from school.

The record contains an expulsion hearing notice, dated May 23, 2014, from the district administrator of the Adams-Friendship Area School District. The letter advised that a hearing would be held on June 2, 2014, that could result in the pupil's expulsion from the Adams-Friendship Area School District. The letter was sent separately to the pupil and his mother by certified mail. The letter stated, "We have included a tri-fold brochure explaining the expulsion process and [the pupil's] rights." A copy of the brochure was not included in the record. In addition, the expulsion hearing notice did not allege the specific statutory grounds and the particulars of the alleged conduct upon which the expulsion was based.

The hearing was held in closed session on June 2, 2014. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother 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. According to the expulsion order, dated June 2, 2014, the school board found that the pupil "endangered the health and safety of students and staff" and the interest of the school demands the pupil be expelled. The order was mailed separately to the pupil and his mother. The order stated the pupil was expelled through June 30, 2015. The order also provided that the pupil could be readmitted by March 15, 2015 if he met a variety of conditions.

Minutes of the school board expulsion hearing were not included in the record. An audio recording was included with 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. §§ 119.25 and 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. Wisconsin Dep't of Pub. Instruction, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

In the appeal, the appellant raises a number of concerns with the expulsion process, including an allegation that the expulsion order contained charges not previously mentioned (i.e., the pupil was in possession of a weapon and prescription drugs that he did not have a prescription for). The expulsion statute requires expulsion notices to state “the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” Wis. Stat. § 120.13(1)(c)4.a. Proper notice must inform the student of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the misconduct to be considered. L.W. by the Iowa-Grant School Dist., (720) Aug. 19, 2014. The purpose of the notice requirement is to ensure that a student facing expulsion is sufficiently apprised of the charges so as to be able to defend against them. *Id.* The expulsion notice did not describe or mention the misconduct, where it occurred, or when it occurred. As such, the pupil and his parent were not provided with proper notice, in violation of Wis. Stat. § 120.13(1)(c)4.a. Therefore, the expulsion must be reversed.

While failure to state the particulars of the misconduct alone is sufficient to overturn the expulsion decision, I will address the appellant’s remaining concerns and other problems with the expulsion process in the event that the school district chooses to re-conduct expulsion proceedings. First, the appellant argues that other students were treated differently. Because it is presumed that each student’s situation is different, the disciplinary treatment of other students is not relevant to the superintendent’s review. Damis M. by the Cadott School Dist., (397) Aug. 20, 1999. Therefore, it is not reversible error for the school board to treat the pupil more harshly than other students.

Second, the appellant argues that the school district denied the right to an education while the pupil was expelled. Specifically, the appellant alleges that the pupil was not allowed to take

his final exams, thus affecting his final grades. School boards are required by state law to provide a suspended student with the opportunity to take examinations and complete course work during the suspension. Wis. Stat. § 120.13(1)(b)4. Further, “no public school may deny a pupil credit in a course or subject solely because of the pupil’s...suspension from school.” Wis. Stat. §118.14(4)(b). While the appellant’s allegation is troubling, the state superintendent’s jurisdiction in an expulsion appeal does not extend to a review of suspensions. Madison Metro. Sch. Dist. v. Wisconsin Dep’t of Pub. Instruction, 199 Wis. 2d 1, 13, 543 N.W.2d 843, 848 (Wis. Ct. App. 1995). Therefore, even if the allegation is true, it is not grounds to reverse the expulsion order.

Third, the appellant admits that the pupil was in possession of illicit items, but argues that the possession was unintentional. This same argument was presented to the school board at the expulsion hearing. During the hearing, the pupil’s mother stated numerous times that the items were mistakenly put in the pupil’s backpack after the pupil spent a weekend at a friend’s house. (The items were discovered during the K9 search the following Thursday, May 15, 2014.) When questioning the pupil’s mother, the school board members were plainly skeptical about this explanation. As the trier of fact, the school board is in the best position to determine the credibility and sufficiency of evidence. If there is any reasonable view of the evidence which will sustain the school board’s findings, the state superintendent will uphold those findings. Kathleen W. by the Tri-County Area School Bd., (130) May 10, 1985. Based on a review of the entire record, it was reasonable for the school board to determine that the pupil intentionally possessed the illicit items.

The appellant also alleges that the school board erroneously determined that the pupil possessed a prescription drug that he did not have a prescription for. The expulsion order stated

that the pupil was engaged in two types of misconduct: “possession of a weapon” and “possession of a prescription drug that he did not have a prescription for.” The record contains ample evidence that the pupil did have a prescription for Bupropion. For example, the school administration’s Exhibit 4, a disciplinary referral form, listed the items found in the pupil’s backpack. Regarding the pills, it stated, “Bupropion (generic Wellbutrin) has prescription.” (Emphasis added) Similarly, the pupil’s mother submitted medical records during the expulsion hearing which show that the pupil had a prescription for Bupropion. Even the police report, the school administration’s Exhibit 15, indicated that the pupil had a prescription. There is no evidence in the record that the pupil did not have a prescription. Because no reasonable view of the evidence supports this finding, it cannot be upheld.

It should be noted that the school board could have reasonably made a finding that the pupil’s conduct – i.e., possessing 11 pills of Bupropion – met the statutory grounds for expulsion. Specifically, the record contains evidence that: the pupil stopped taking the medication in March 2014 – two months before the search; the pupil elaborately concealed the pills; pill-like residue was found the file of the pupil’s pocket knife; and crushed Bupropion pills are smoked or snorted by some individuals to achieve a “crack-like” high. As such, the pupil may have possessed the pills to use them in an illicit manner. This could support a finding that, despite having a prescription, possession of the Bupropion was “...conduct while at school...which endangered the property, health or safety of others.” Instead, the expulsion order relies upon the unsupported finding that the pupil did not have a prescription for the drug.

Finally, the record demonstrates a number of other procedural due process errors not raised by the appellant, including:

- The expulsion notice did not state the specific statutory grounds upon which the expulsion is based, in violation of Wis. Stat. § 120.13(1)(c)4.a.;
- The expulsion notice did not contain the notifications required by Wis. Stat. §§ 120.13(1)(c)4.e – L.;<sup>1</sup>
- The expulsion order did not contain a finding of the specific statutory ground upon which the pupil was expelled, in violation of Wis. Stat. § 120.13(1)(c)1;<sup>2</sup> and
- The school board did not keep written minutes of the hearing, in violation of Wis. Stat. § 120.13(1)(c)4.f.<sup>3</sup>

State law gives school boards the authority to expel students 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, 786, 709 N.W.2d 73, 80. Because the

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<sup>1</sup> The expulsion hearing notice stated that a “tri-fold brochure explaining the expulsion process and [the pupil’s] rights” was enclosed with the notice. Presumably, this brochure addressed some of the requirements of Wis. Stat. § 120.13(1)(c)4. However, the school board did not provide the brochure with the record it submitted to the state superintendent. As such, I must assume that the brochure did not advise the pupil and his parent of the notifications required by statute.

<sup>2</sup> The expulsion statute creates a two-part test for determining whether a pupil may be expelled. First, the school board must determine whether the pupil’s conduct meets one of the specific statutory grounds for expulsion. Wis. Stat. § 120.13(1)(c)1. Second, the school board must determine whether interest of the school demands the pupil’s expulsion. In this case, the school board only found that the pupil “endangered the health and safety of students and staff.” This appears to be an amalgamation of several statutory grounds. If a school board does not find the pupil guilty of one of the specific statutory grounds, the expulsion will be reversed. Alfred L. by the Oconto Fall School Dist., (338) September 24, 1997.

<sup>3</sup> The school board did not submit any minutes of the hearing with the expulsion record. Therefore, I must assume that the school board did not create such a document.

school board failed to follow the specific statutory procedures, the expulsion decision must be reversed.<sup>4</sup>

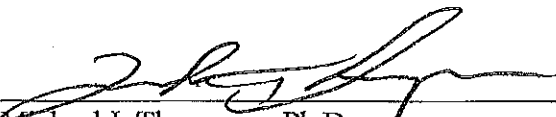
### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of Wis. Stat. §120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of T [REDACTED] R [REDACTED] by the Adams-Friendship Area School District Board of Education is reversed.

Dated this 29<sup>th</sup> day of August 2014

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

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<sup>4</sup> The department's website contains information to help school districts avoid the procedural errors described above. This information includes an expulsion checklist and a template for expulsion hearing notices. See [http://sspwi.dpi.wi.gov/sspwi\\_disciplineexpulsion](http://sspwi.dpi.wi.gov/sspwi_disciplineexpulsion)