

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

S [REDACTED] P [REDACTED]

by New Berlin School District
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-6

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 New Berlin School District Board of Education to expel the above-named pupil from the New Berlin School District. This appeal was filed by the pupil's father (hereinafter referred to as "appellant") and received by the Department of Public Instruction on July 21, 2015. Pursuant to 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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated June 29, 2015, from the district administrator of the New Berlin School District. The letter advised that a hearing would be held on July 7, 2015, that could result in the pupil's expulsion from the New Berlin School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by regular and 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 on May 28, 2015, the pupil was in possession of marijuana, a baggy containing three prescription pills, and drug paraphernalia. The items were discovered in the trunk of the pupil's car by law enforcement during a "canine sniff" of vehicles parked in the school's student parking lot. The pupil did not have a prescription for the pills, which belonged to his brother.

The hearing was held in closed session on July 7, 2015. The pupil and his parents appeared at the hearing with 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 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 July 9, 2015, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through until his 21st birthday. The order also permits early reinstatement by July 1, 2016, if the pupil attends counseling and passes a drug screening test. Minutes of the school board expulsion hearing, a digital recording of the hearing, and written submissions by the parties 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 demand the pupil's expulsion.

The appeal letter in this case raises one issue which requires consideration: whether the pupil's conduct (i.e., possession of illegal substances in the trunk of his car on school property) endangered the property, health, or safety of others. The appellant argues that no evidence was presented at the expulsion hearing which proved that the pupil's possession of illegal substances, by itself, endangered the property, health, or safety of others. Specifically, the appellant argues that no person besides the pupil was aware that there were illegal substances in the pupil's car.

This argument fails for two reasons. First, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *R.W. by the Kenosha School Dist.*, (631) September 25, 2008. Further, it is within a board's discretion to give weight to the evidence and arguments, as it deems appropriate, and to judge the credibility of witnesses. *D.S. by the Nicolet Union High School Dist.*, (702) January 18, 2013. Here, the school board heard testimony from school administrators and a school resource officer that the pupil's possession of illegal substances endangered others. While the appellant may disagree with this testimony and the board's evaluation of it, this is not grounds to overturn the school board's decision. Second, the state superintendent has consistently held that possession of illegal substances on school grounds, even in small amounts, satisfies the statutory grounds for expulsion. See e.g., *Joshua S by the Beloit-Turner School Dist.*, (307) January 14, 1997. Therefore, the school board's decision must be upheld.

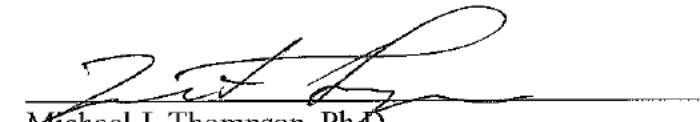
CONCLUSIONS OF LAW

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 Wis. Stat. §120.13(1)(c). Therefore, the expulsion is affirmed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of S [REDACTED] P [REDACTED] by the New Berlin School District Board of Education is affirmed.

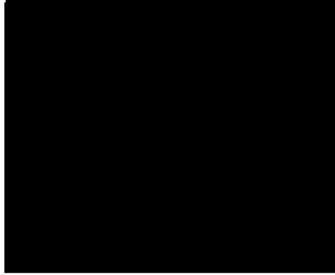
Dated this 21st day of September 2015


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

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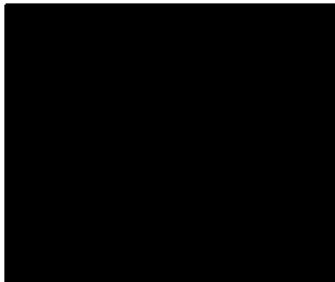
Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public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

PARTIES TO THIS APPEAL ARE:



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