

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>N ■■■ B ■■■■■</p> <p>by Pulaski Community School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 15-EX-7</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 Pulaski Community School District Board of Education to expel the above-named pupil from the Pulaski Community School District. This appeal was filed by the pupil's mother ("Appellant") and received by the Department of Public Instruction on July 27, 2015.

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 pupil's expulsion is the result, in part, of threatening comments he made while at school to other students during May 2015. While one of the students believed the pupil was only joking, several others were concerned about the nature of the comments and reported the pupil's conduct to school administrators on May 29, 2015. That same day, school administrators and several police officers removed the pupil from class and interviewed him. During an interview, the pupil admitted to making comments about "blowing up" or "shooting up" the school. However, the pupil claimed he was only joking. A search of the pupil's backpack revealed an e-cigarette, ibuprofen tablets, and unmarked pills.

The record contains a letter entitled "Notice of Expulsion Hearing," dated June 1, 2015, from Lisa Misco, the school district's director of student services. The letter advised that a hearing would be held on June 9, 2015, that could result in the pupil's expulsion from the Pulaski Community School District through the pupil's 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. The letter specifically alleged the pupil made comments on May 25, 2015, to students at his lunch table. The comments included: "Don't come to school on the last day. I am going to shoot up the high school," and "If you are here on that day, you are going to be first." The letter also alleged that the pupil was in possession of an e-cigarette, ibuprofen, and other pills, in violation of the school board's drug policies.

The hearing was held in closed session on June 9, 2015. 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 parent 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 school 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 June 24, 2015, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through to the pupil's 21st birthday. The order also permitted the pupil to earn his remaining high school credits through the school district's online educational services. Minutes of the school board expulsion hearing and a digital recording of the expulsion hearing are part of the record.

DISCUSSION

The appeal letter in this case raises four issues which require consideration. Most importantly, the appellant argues that the school district did not properly notify the pupil of the date or dates of the pupil's misconduct. As mentioned above, the Notice of Expulsion Hearing stated that the pupil's comments occurred at school during lunch period on May 25, 2015. As the school district acknowledges in correspondence with the department, this date is incorrect. May 25 was Memorial Day and, as a result, the school was not in session. Further, the record contains written accounts from several students, all of which are dated May 29, 2015. In one of the written accounts, a student claims the pupil made threatening statements "on Tuesday" (i.e., Wednesday, May 26, 2015). Another student claimed the pupil made threatening comments two weeks prior to May 29, 2015. Yet another student claimed the pupil made comments the day before (i.e., Thursday, May 28, 2015).

Proper notice must inform the pupil of the particulars of the conduct, which includes the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the misconduct to be considered. *L.W. v. Iowa-Grant School District*, (720) August 19, 2014. The particulars of conduct require detailed information, not generalizations. *Eric Paul H. by the Mischicot Sch. Dist* (459) March 11, 2002. The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *M.S. by the Milwaukee Public School District*, (675) December 21, 2010. Misconduct considered and determined by a school board must have occurred within the time frame set forth in the notice; otherwise, the expulsion decision will be reversed. *A.T. by Waupun School Dist.*, (625) July 11, 2008. Because the Notice of Expulsion Hearing contained the wrong date for the pupil's misconduct, the pupil's expulsion must be reversed.

While the expulsion decision must be reversed for this reason alone, I will still review the appellant's remaining allegations in the event that the school board recommences expulsion proceedings against the pupil. The appellant also argues that school administrators "coaxed" the students into making written accounts about the pupil's comments. I find no evidence in the record to support this contention. Further, this issue was not raised before the school board. As such, it is beyond the scope of my review. *Tony R. by the Lake Geneva JI Sch. Dist.* (259) Aug. 11, 1995.

The appellant also argues that she was unable to cross examine witnesses at the hearing. Specifically, the appellant claims that "there were no witnesses there to question or support the Administration's case" and "the only evidence that was presented was the statements having the kids['] names blocked out." The record demonstrates that the school administration did have a witness, Ms. Misco. Ms. Misco testified at length about the pupil's comments, the

administration's investigation, and the pupil's prior conduct. The appellant was afforded an opportunity by the hearing officer to cross examine Ms. Misco. In regards to the redacted written accounts, students facing expulsion do not have the right to know the identities of witnesses who are minors. *Timothy W. by the Greenfield School Dist.*, (315) March 21, 1997. Further, there is no right to cross-examine students who accuse the pupil of misconduct and who are not called as witnesses at the hearing. *Jack M. by Mercer School Dist.*, (514) May 7, 2004. Therefore, no error occurred related to the appellant's ability to cross examine witnesses.

Finally, the appellant argues that the decision to expel the pupils was "also based on [the pupil] having been suspended for having an e-cigarette." While there was a discussion of the pupil's previous infractions during expulsion hearing, it is clear that the school board based its decision solely on the misconduct specified in the Notice of Expulsion Hearing. As such, no error occurred.


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 N [REDACTED] B [REDACTED] by the Pulaski Community School District Board of Education is reversed.

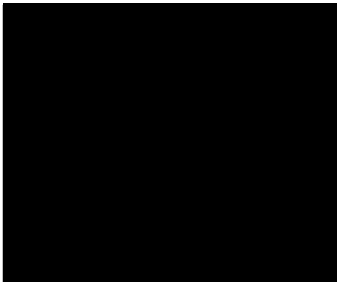
Dated this 25th day of September 2015


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

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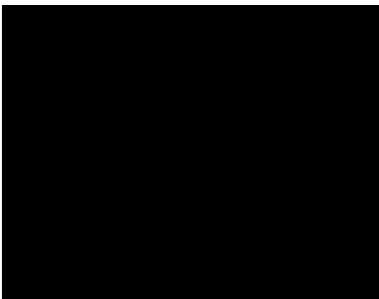
Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent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

PARTIES TO THIS APPEAL ARE:



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