

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>H [REDACTED] M [REDACTED]</p> <p>by West Allis-West Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 15-EX-11</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 West Allis-West Milwaukee School District Board of Education (School Board) to expel the above-named pupil from the West Allis-West Milwaukee School District (School District). This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on December 21, 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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated November 16, 2015, from the principal of Nathan Hale High School. The letter advised that a hearing would be held on November 24, 2015, that could result in the pupil's expulsion from the School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by

certified mail. The letter, quoting the expulsion statute, alleged that the 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” (i.e., the pupil made a bomb threat). The letter specifically alleged that on Monday, November 9, 2015, the pupil reported to school administrators that he received a bomb threat via two text messages from an unknown person.¹ That same day, after a brief investigation, the pupil admitted to school authorities that he wrote and sent both texts.

The hearing was held before an independent hearing officer (IHO) in closed session on November 24, 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.

On November 25, 2015, the IHO issued an Order of Expulsion. The IHO found that the pupil did make a bomb threat and that the interests of the school demanded the pupil’s expulsion. The IHO’s order for expulsion, containing the findings of fact and conclusions of law, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil’s 21st birthday. On December 7, 2015, the School Board accepted the IHO’s expulsion order. By letters dated December 8, 2015, the School Board notified the pupil and his parents that it had accepted the IHO’s expulsion order. Minutes and a digital recording of the expulsion hearing are a part of the record, along with the written submissions of the parties’ attorneys.

¹ The first text was sent to the pupil on Sunday, November 8, 2015. The second text was sent to the pupil on Monday, November 9, 2015.

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 appellant raises two interrelated issues that require consideration. First, the appellant argues that the IHO’s order violates the pupil’s due process rights because it contains incorrect facts. Specifically, the appellant claims that the order does not accurately summarize the chronology of events because “at no time did the school receive any notice of the bomb scare on Sunday[,] November 8, 2015[,] as stated in her decision and order.” Using the correct facts, the appellant suggests, puts the pupil’s conduct “outside the intent and application” of the expulsion statute. However, the IHO’s order correctly stated the facts. The order plainly stated that the school first learned of the threat on Monday, November 9, 2015:

During school on November 9, 2015, [the pupil] reported that he received two bomb threats directed at Nathan Hale High School. [The pupil] reported that the first threat was received in a text the day before (Sunday, November 8, 2015) and stated “12:00 a bomb will go off at Nathan Hale.” The second threat was in a text that morning that stated “5 more hours till the bomb goes off.” During an investigation by the Administration, [the pupil] admitted that he sent both text messages and made the bomb threats.

(Emphasis added).

In addition, the appellant does not explain why the “correct” chronology of events puts the pupil’s conduct outside the “intent and application” of the expulsion statute. The appellant appears

to rely upon the fact that the pupil's threat was quickly discovered to be a ruse. However, the expulsion statute does not distinguish between bomb threats that are real and bomb threats that are not real. Conveying "false information concerning ... an alleged attempt being made ... to destroy any school property by means of explosives" provides grounds for expulsion. Wis. Stat. § 120.13(1)(c)1.

Second, the appellant argues that the length of the expulsion is excessively harsh. The appellant suggests that the School Board might have adopted shorter expulsion had the IHO's order contained the "correct" facts and an explanation for the length. This argument also fails. Again, the IHO's order contained a correct recitation of the facts. Further, the expulsion statute does not require expulsion orders to contain explanations for the length of the expulsion. Based on the facts, it was entirely reasonable for the School Board to accept the length of expulsion recommended in the IHO's order. Finally, the State Superintendent has consistently held that the finder of fact, regardless of whether it is a school board or a hearing officer, is in the best position to determine the length of expulsions. *See e.g., T.R. by the Nicolet School Dist.*, (707) December 17, 2013. While the expulsion statute explicitly authorizes the State Superintendent to modify expulsion orders,² the State Superintendent will only do so in extraordinary circumstances. *J.P. by the Chippewa Falls School Dist.*, (666) August 10, 2010. Here, there are no such circumstances. The expulsion's length is entirely reasonable considering the nature and severity of the pupil's misconduct.

² The expulsion statute states that "the department shall review the decision and shall, upon review, approve, reverse or modify the decision." Wis. Stat. § 120.13(1)(c)4.i. (Emphasis added).

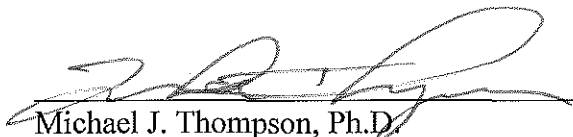
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the School Board and IHO complied with all of the procedural requirements of Wis. Stat. §120.13(1)(c) and that no reversible error occurred.

ORDER

IT IS THEREFORE ORDERED that the expulsion of H [REDACTED] M [REDACTED] by the West Allis-West Milwaukee School District Board of Education is affirmed.

Dated this 18th day of February 2016


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:

H [REDACTED] M [REDACTED]
c/o Scott Wales
Law Offices of Scott A. Wales, LLC
839 North Jefferson St, Suite 300
Milwaukee, WI 53202

Marty Lexmond
District Administrator
West Allis-West Milwaukee School District
1205 S 70th St
West Allis, WI 53214

Copies mailed to:

H [REDACTED] M [REDACTED]
c/o Attorney Scott Wales
Law Offices of Scott A. Wales, LLC
839 North Jefferson St, Suite 300
Milwaukee, WI 53202

Attorney Alana Leffler
Buelow Vetter
20855 Watertown Road, Suite 200
Waukesha, WI 53186