Decision and Order No.: 737

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of E[redacted] C[redacted] by Oconomowoc Area School District Board of Education	DECISION AND ORDER Appeal No.: 16-EX-04

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 Oconomowoc Area School District Board of Education to expel the above-named pupil from the Oconomowoc Area School District. This appeal was filed by the pupil's parents ("appellant") and received by the Department of Public Instruction on April 25, 2016.

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 of the pupil posting a threat on social media on December 19, 2015, to carry out a school shooting. The post contained a photograph of the pupil and another student with the text, "schoolshootersquad." The caption below the photograph said, "Don't come

to school Monday guys [gun emoji] #shootitup #justcaughtabody #maybe2." The pupil admitted to posting the threat and responding to his followers' comments about the threat when questioned by the police on December 20, 2015. The pupil's mother was present at the time of questioning.

On January 4, 2016, the school district began the expulsion process by mailing a "Notice of Expulsion Hearing" (Notice). The Notice advised that a hearing would be held on January 14, 2016, 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 specifically alleged that the pupil made a comment on social media threatening to conduct a school shooting.

The hearing was held in closed session on January 14, 2016. The pupil and his parents appeared at the hearing without 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 school board found that the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. The school board further found that the interests of the school demanded the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated January 20, 2016, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday. The order also permitted the pupil to return to school, on a probationary basis, on March, 7 2016 (i.e., 47 days after the date of the expulsion order). Minutes and a digital recording of the hearing are

part of the record. In addition, the school district's attorney and the appellant's attorney submitted briefs to the state superintendent.

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, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent must ensure that the required statutory procedures were followed, that the state 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 Metro. Sch. Dist. v. Wis. D.P.I., 199 Wis. 2d 1, 543 N.W.2d 843 (1995).

The appellant raises several issues which require consideration. First, the appellant argues that the Notice was defective for three reasons. Specifically, the appellant claims the phrasing of the Notice was confusing and misleading, the Notice references that the action may result in "her" suspension, and the notice failed to reference Wis. Stat. §§ 119.25 and 120.13(1). As to the first two reasons, these are clerical errors that do not change the meaning of the notice. For example, the pupil's name is used throughout the notice, thus alleviating any confusion that may have been caused by the use of the wrong pronoun. As to the third reason, the record does not support appellant's contention. The Notice properly cited Wis. Stat. § 120.13(1) on both pages of the letter for appellant's reference. While the Notice did not cite Wis. Stat. § 119.25, that statute is not relevant to the case at hand because it only applies to the Milwaukee Public Schools.

Second, the appellant argues that there is insufficient evidence to support the pupil's expulsion. Specifically, the appellant argues that the post was made as a joke and there is

insufficient evidence to prove that the pupil endangered the safety of others or intended to commit any harm. It has been repeatedly held that arguments concerning the sufficiency of evidence are generally beyond the state superintendent's scope of review. L.P. by the Whitewater Unified Sch. Dist., (351) March 31, 1998. Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. There is ample evidence in the record to support the school board's findings and decision to expel the pupil. In this case, the evidence clearly indicates that other students, parents, the administration, and the police all believed the threats were real. For example, a number of students reported the pupil's action to school administrators. Additionally, the pupil had notice that the school district would take threats seriously: the district sent a letter home a month prior to the pupil's threat about a similar incident. The letter described the seriousness of such an offense and the district's zero tolerance policy of threats to safety. Despite this, the pupil posted the threat to social media and responded to multiple comments from followers for 13 hours before removing the post. Simply put, the school board was in the best position to review the evidence and determine whether the pupil's conduct endangered the safety of others.

Third, the appellant argues that the pupil's actions did not warrant the extreme sanction of an expulsion. The state superintendent has held in prior decisions that unless there are exceptional circumstances, the state superintendent will not review whether an expulsion is excessively harsh. As such, school boards are afforded wide latitude in determining whether an expulsion is an appropriate response to alleged conduct. T.R. by the Nicolet Sch. Dist., (707) December 17, 2013. Here, the school board reasonably determined that expelling the pupil was an appropriate response to the bomb threat. Further, the school board significantly reduced the severity of the expulsion by permitting the pupil to return to school after 47 days and allowing the expulsion to be eventually expunged from the pupil's record.Finally, the pupil alleges that the school district treated the pupil

differently from the other student that was involved with the post. Specifically, the appellant alleges that the other student received only a suspension for identical conduct. Because every student's situation is different, the disciplinary treatment of the classmate is not relevant to the review of the pupil's expulsion. J.H. by West Bend Sch. Dist., (721) April 18, 2014.

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 requirements of Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of E[redacted] C[redacted] by the Oconomowoc Area School District Board of Education is affirmed.

Dated this 14th day of June, 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 services 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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