

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>D. [REDACTED] H. [REDACTED]</p> <p>by West Allis-West Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 16-EX-06</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 to expel the above-named pupil from the West Allis-West Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 9, 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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated April 13, 2016, from the principal of the West Allis Central High School. The letter advised that a hearing would be held on April 20, 2016, that could result in the pupil's expulsion from the West Allis-West Milwaukee School District. The letter was sent separately to the pupil and his parent 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 that pupil “participated as a party to a bomb threat by telling another person to call in a bomb threat to West Allis Central High School.”

The hearing was held in before an independent hearing examiner on April 20, 2016. The pupil and his parent 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.

The hearing examiner 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 hearing examiner further found that the interests of the school demand the student's expulsion. The hearing examiner’s order for expulsion containing the findings of fact and conclusions of law, dated April 21, 2016, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through 21st birthday. On May 9, 2016, the school board reviewed hearing examiner’s order and voted to accept it.

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. Under Wis. Stat. § 120.13(1)(e), a school board may appoint an independent hearing examiner to determine whether to expel a pupil. In reviewing an expulsion decision, the state superintendent must ensure, among other things, that the required statutory procedures were followed, that the

expulsion decision is based upon one of the established statutory grounds, and that the school board/independent hearing officer is satisfied that the interest of the school district demand the pupil's expulsion.

Of relevance to this case, the expulsion statute requires the notice to state that “the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.” Wis. Stat. § 120.13(1)(c)4 (Emphasis added). The right to be represented by an attorney is an important component of procedural due process. The statute protects this right by requiring that the notice advise the pupil and the parents of the right to legal representation. *J.H. by the West Bend School Dist.*, (721) August 18, 2014.

The appellant raises a single issue on appeal: whether the expulsion notice was defective because it failed to state that the pupil and his parents could be represented by counsel at the expulsion hearing. Instead, the notice only stated that the pupil “may be represented at the expulsion hearing.” However, the notice also referenced and included a copy of the expulsion statute. As such, the pupil was properly advised of his right to legal representation. *Shannon T. by the Milwaukee Public School Dist.*, (354) April 16, 1998.

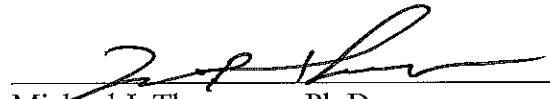
CONCLUSIONS OF LAW

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).

ORDER

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

Dated this 9th day of August 2016

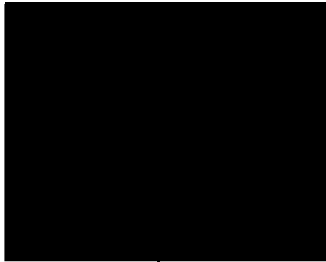


Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

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:



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

Copies mailed to:

Ili Subhan
Subhan Law Office, LLC
250 E. Wisconsin Ave., Suite 1800
Milwaukee, WI 53202

Alana Leffler
Buelow Vetter
20855 Watertown Rd., Suite 200
Waukesha, WI 53186