

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

J ■■■ C ■■■

by Oshkosh School District  
Board of Education

DECISION AND ORDER

Appeal No.: 16-EX-08

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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 Oshkosh School District Board of Education to expel the above-named pupil from the Oshkosh School District. This appeal was filed by the pupil's parents ("Appellant") and received by the Department of Public Instruction on July 21, 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 an April 29, 2016, posting by the pupil on Facebook. The record contains a letter entitled "Notice of Expulsion Hearing," dated May 10, 2016. The letter advised that a hearing would be held on May 17, 2016, that could result in the pupil's expulsion from the Oshkosh School District through 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 or engaged in conduct while not at school or while not under the supervision of a school authority that endangered the property, health or safety of others at school. The letter specifically alleged the pupil made threatening website postings of "a photo of [the pupil] with an airsoft gun. The photo caption, written by your friend, stated, "some of you guys are okay; don't come to school tomorrow." Further the notice alleged the pupil had text messages regarding the posting and other references to school shootings and other acts of violence. Finally the alleged acts included a website search history showing the pupil was on sites referencing other school shootings.

The hearing was held in closed session on May 17, 2016, by a hearing examiner. The pupil and his mother appeared at the hearing without counsel. The pupil's father appeared by phone. 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 hearing examiner issued Findings of Facts and made a recommendation to the board to adopt the administration's recommendations. The school board deliberated the recommendation in closed session. The school board found that the interests of the

school demand the student's expulsion. The order for expulsion containing the findings of fact and Order of the school board, dated May 25, 2016, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through pupil's 21st birthday. The order also permitted the pupil to earn his high school credits for the 2016-17 school year through the school district's online educational services. The pupil is entitled to apply for early readmission to the school district for the 2017-18 school year if he meets a number of conditions. A transcript of the expulsion hearing and a digital recording of the expulsion hearing are part of the record.

### **DISCUSSION**

First, the district alleges the Appellants do not have standing to file this appeal. They state no facts to support this. Given the student was expelled and his parents are permitted to file an appeal on his behalf, I do not know to what the school district is referring. Given it does not pursue the argument further, I find the Appellants had standing to file.

Second, the Appellants did receive proper notice of the expulsion hearing and the allegations. The school conducted its own investigation so it was not relying solely on juvenile police records of the pupil. The issue becomes did the school district prove that the pupil met one of the statutory reasons to expel? Wis. Stat. § 120.13(1)(c)1 states:

The school board may expel a pupil from school whenever it . . . finds that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, or finds that a pupil while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled, and is satisfied that the interest of the school demands the pupil's expulsion. In this subdivision, conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

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.

The hearing examiner skipped the entire step of determining whether the pupil engaged in behavior that endangered the property, health or safety of others at school. The school board added nothing to address that aspect. Both bodies found only that there were facts which included the threat being made by pupil's friend, not the pupil, and that the interests of the school board required expulsion.

The statutory reasons for expulsion include an *act* or a *threat of an act* which endangers or threatens to endanger others. Testimony confirms that police and school officers did not find an act or threat of an act; they felt a threat might exist. This is not the same thing. The hearing examiner found that the pupil did not post the alleged threat, that he had no intention of threatening anyone and was engaging in "dark humor". Then, he failed to find that the pupil actually engaged in the alleged behavior himself or that he endangered or threatened to endanger anyone. However, he then jumped immediately to determining that the best interests of the school district demand expulsion. The hearing examiner failed to address whether the school established the truth of the charge by a preponderance of the credible evidence as required. Earl N. by the Milwaukee School Dist. (111).

The school district is correct that the state superintendent limits his review of expulsions generally to procedural matters. However, what can be more of a procedural error than to fail to find that the pupil engaged in one of the statutory reasons for expulsion. This decision must be overturned as violating the pupil's due process.

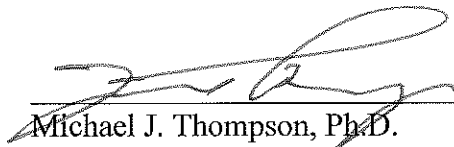
### CONCLUSIONS OF LAW

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 J [REDACTED] O [REDACTED] by the Oshkosh School District Board of Education is overturned.

Dated this 19<sup>th</sup> day of September, 2016

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

### APPEAL RIGHTS

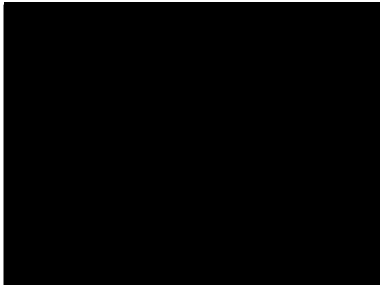
Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent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

**PARTIES TO THIS APPEAL ARE:**



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