

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

A [REDACTED] B [REDACTED]

by School District of West DePere School  
District  
Board of Education

DECISION AND ORDER

Appeal No.: 16-EX-12

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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the School District of West DePere School District Board of Education to expel the above-named pupil from the School District of West DePere School District. This appeal was filed by the pupil and received by the Department of Public Instruction on September 6, 2016.

In accordance with the provisions of Wis. Adm. 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 § 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 record contains a letter entitled "Notice of Expulsion Hearing," dated May 3, 2016, from the district administrator of the School District of West DePere School District. The letter advised that a hearing would be held on May 12, 2016, that could result in the pupil's expulsion from the School District of West DePere School District through his 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 that, "On April 25, 2016, the pupil was found to be in possession of prescription medication that was not prescribe to him (Alprazolam) and was in possession of four 'hits' of LSD while on school premises."

The hearing was held in closed session on May 12, 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.

After the hearing, the 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 examiner 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 examiner, dated May 13, 2016, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through until his 21st birthday. Minutes of the school board vote, an audio recording of the expulsion hearing and minutes of the hearing are part of the record.

## DISCUSSION

School districts are limited-purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the state superintendent's review is limited to that set out in § 120.13(1)(c). In *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). It is, therefore, incumbent upon the state superintendent in reviewing an expulsion decision to ensure 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 interests of the school district demand the pupil's expulsion.

The appeal letter in this case raises one issue which requires consideration. The parent alleges the process was unfair and she should have been provided with legal counsel. By statute, the school district is required to inform the pupil and parents, where required, of the right to be represented at the hearing by counsel. Wis. Stat. § 120.13(1)(c)4. There is no requirement that

counsel be provided to the pupil or that one be appointed at public expense. See *Stephanie T. by the Milwaukee School Dist.*, (348) March 3, 1998; *Shannon T. by the Milwaukee Public School Dist.*, (354) April 16, 1998, *Jamie B. by the Barron School Dist.*, (358) May 14, 1998; *P.A. by Janesville School Dist.*, (630) September 4, 2008. The School District informed the pupil and his parents of the right to be represented by legal counsel. They chose not to avail themselves of that right. The district had no further duty with respect to that. In all other respects, the district complied with due process procedures.

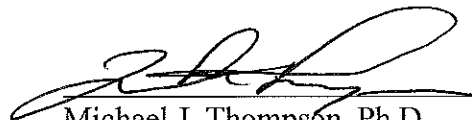
### CONCLUSIONS OF LAW

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 §120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of A [REDACTED] B [REDACTED] by the School District of West DePere School District Board of Education is affirmed.

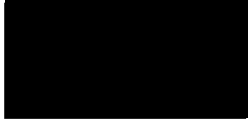
Dated this 4<sup>th</sup> day of November, 2016.

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

**APPEAL RIGHTS**

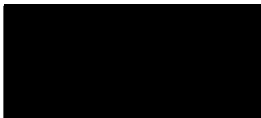
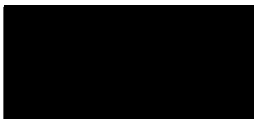
Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public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

Parties to this appeal are:



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