

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

E [REDACTED] B [REDACTED]

by Chilton Public School District  
Board of Education

DECISION AND ORDER

Appeal No.: 17-EX-05

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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 Chilton Public School District Board of Education to expel the above-named pupil from the Chilton Public School District. This appeal was filed by the pupil's parents ("Appellants") and received by the Department of Public Instruction on May 25, 2017.

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 based on findings of the school board that the pupil possessed tobacco paraphernalia on school grounds, possessed and distributed controlled substances on school grounds, and issued a threat via social media which endangered others.

The hearing record contains a letter providing notice of an expulsion hearing dated October 24, 2016. This hearing notice advised that a hearing would be held on October 31, 2016, that could result in the pupil's expulsion from the Chilton Public School District through the pupil's 21st birthday. The hearing notice was sent separately to the pupil and his parents by certified mail. The hearing notice alleged that the pupil engaged in conduct: 1) while at school and under the supervision of a school authority which endangered the property, health or safety of others at school; 2) while not at school and while not under the supervision of a school authority which endangered the property, health or safety of others at school; 3) while at school and under the supervision of a school authority which endangered the property, health or safety of any employee or school board member of the school district; and 4) that is a repeated refusal or neglect to obey school rules. Specifically, the hearing notice alleged the pupil: 1) was involved in the possession, sale and distribution of a controlled substance to another student while on school property; 2) was involved in the possession of tobacco paraphernalia while on school property; and 3) issued a threat via social media which did endanger the property, health and safety of others.

The hearing was held in closed session on October 31, 2016. The pupil's father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's father was given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations, except that the pupil's father was not allowed to present evidence regarding a previously-held manifestation determination.

After the hearing, the school board deliberated in closed session. The school board found the allegations set forth in the hearing notice to be true, and that the pupil did engage in conduct: 1) while at school and under the supervision of a school authority which endangered the property,

health or safety of others at school; 2) while not at school and while not under the supervision of a school authority which endangered the property, health or safety of others at school; 3) while at school and under the supervision of a school authority which endangered the property, health or safety of any employee or school board member of the school district; and 4) that is a repeated refusal or neglect to obey school rules. The school board further found that the interest of the school demands the student's expulsion.

The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 8, 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 limited, immediate early reinstatement to earn high school credits off-campus, and further permitted early reinstatement to on-campus high school attendance no sooner than the start of the second semester of the 2018-2019 school year, subject to compliance with conditions relevant to the circumstances of the pupil's expulsion.

Minutes of the school board expulsion hearing, exhibits submitted at the hearing, and a partial audio recording of the expulsion hearing are part of the record.

### **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 demands the pupil's expulsion.

The appeal letter and subsequent briefs submitted in this matter raise several issues which require consideration. First, the Appellants argue that the minutes of the expulsion hearing and partial audio recording do not establish a sufficient record of the hearing. Though helpful for purposes of review, a school board is not required to capture an audio recording of an expulsion hearing. *D.J.S. by Hartford Union High Sch. Dist. Bd. of Educ.* (550) July 8, 2005. A school board is only required by statute to keep minutes of an expulsion hearing, pursuant to Wis. Stat. § 120.13(1)(c)3. At a minimum, the minutes must indicate who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what actions the board took based upon the evidence presented. *B.B. by the Preshtigo Sch. Dist. Bd. of Ed.* (660) May 13, 2010; *Nathan W. by the Wilmot Union High Sch. Dist. Bd. of Ed.* (296) July 10, 1996.

The minutes satisfy these minimum requirements. Though the Appellants contend that the minutes do not include reference to evidence presented at the hearing, the minutes do reference the school district administration exhibits on which the school board made its decision. These exhibits are also described in detail and entered into the hearing record in the audio recording of the hearing. The hearing record is therefore sufficient for purposes of Wis. Stat. § 120.13(1)(c)3 and this review.

Second, the Appellants argue that the pupil was denied due process when the pupil's father was not allowed to contest whether the pupil's behavior was a manifestation of the pupil's disability. Prior to the expulsion hearing, the school district held a manifestation determination and found the pupil's behavior was not a manifestation of the pupil's disability under Section 504 of the Rehabilitation Act of 1973 (Section 504).

An expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. A school board is only

able to rely on the judgment of the manifestation determination team in this regard, and an expulsion hearing may not serve as a forum to revisit this determination. Any challenge to the manifestation determination itself is generally beyond the scope of an expulsion pursuant to Wis. Stat. § 120.13(1)(c), and the school board did not deny due process when it declined to hear this challenge. *R.S. by the Barron Area School Dist.* (417) June 9, 2000.

Third, the Appellants argue the school board's findings are not supported by the evidence, specifically in regard to whether the pupil made a threat that endangered others. Absent extraordinary circumstances, it is inappropriate for a state superintendent to second-guess a school board's decision. *A.M. by the Germantown Sch. Dist. Bd. of Ed.* (749) June 19, 2017; *C.T. by the Milwaukee Public Schools* (718) May 22, 2014. Findings will be upheld if any reasonable view of the evidence sustains them. *A.J. by Oconto Falls Sch. Dist. Bd. of Ed.* (738) June 23, 2016; *T.S. by the West Allis-West Milwaukee Sch. Dist. Bd. of Educ.* (684) May 20, 2011; *L.P. by the Whitewater Unified Sch. Dist. Bd. of Educ.* (351) March 31, 1998.

The hearing record contains a social media post of the pupil's face with the caption, "Me wondering which gun would be the best for murdering the entire school." While reasonable interpretations of this post may disagree whether the post communicates a threat or the degree of that threat, the photo and caption may reasonably be interpreted as a threat to the safety of District pupils and staff. The hearing record also includes a detailed timeline of events describing the pupil's possession of tobacco paraphernalia, and the pupil's acquisition, possession, consumption and distribution of a variety of controlled substances. This timeline is corroborated by the pupil's own extensive admissions and written statement, surveillance footage, the testimony of other pupils, and other electronic communications. Though the Appellants dispute how the board interpreted this evidence, there is no dispute that the Appellants were provided the opportunity to

challenge this evidence, argue over its interpretation, and present the Appellants' own view of events and supporting evidence. A reasonable view of this evidence supports the school board's findings.

Fourth, the Appellants allege that the hearing notice was deficient, in that the notice included grounds for expulsion articulated by Wis. Stat. § 120.13(1)(c)2., which may only apply if the pupil is at least 16 years old. The challenged hearing notice language did not reference Wis. Stat. § 120.13(1)(c)2., but instead referenced grounds under Wis. Stat. § 120.13(1)(c)1., which states in relevant part that the "school board may expel a pupil from school whenever it finds the pupil guilty of repeated refusal or neglect to obey the rules ...". These statutory grounds do not require the pupil to be 16 years old.

Further, the Appellants argue that the hearing notice should have included a statement that the board must find the interest of the school demands the pupil's expulsion, citing *Justin B. by Central/Westosha High Sch. Dist. Bd. of Ed.* (494) May 8, 2003. Though the board is required to find that the interest of the school demands the pupil's expulsion, there is no statutory requirement that this be included in the hearing notice. *See* Wis. Stat. § 120.13(1)(c)4. The language in the *Justin B.* decision that says otherwise is incorrect and should be disregarded.

Finally, the Appellants argue that the District has failed to comply with its obligations under Wis. Stat. § 118.125 throughout the expulsion process. Compliance with this statute is generally beyond the scope of Wis. Stat. § 120.13(1)(c), and is therefore also beyond the scope of this review.

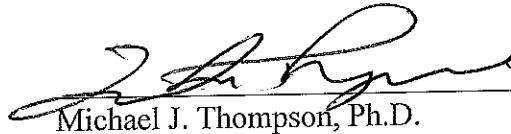
### **CONCLUSIONS OF LAW**

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 E [REDACTED] B [REDACTED] by the Chilton Public School District Board of Education is affirmed.

Dated this 24th day of July 2017



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.

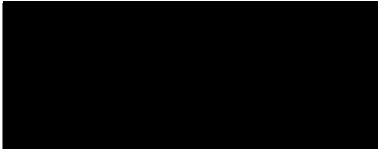
**PARTIES TO THIS APPEAL ARE:**

[REDACTED]

[REDACTED]

Susan Kaphingst  
Superintendent  
Chilton Public School District  
530 W. Main Street  
Chilton, WI 53014

**COPIES MAILED TO:**



James Macy  
von Briesen & Roper, s.c.  
2905 Universal Street, Suite 2  
Oshkosh, WI 54904