

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

M [REDACTED] M [REDACTED]

by Weyauwega-Fremont School District  
School District  
Board of Education

DECISION AND ORDER

Appeal No.: 17-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 Weyauwega-Fremont School District School District Board of Education to expel the above-named pupil from the Weyauwega-Fremont School District School District. This appeal was filed by the pupil and received by the Department of Public Instruction on September 11, 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 § 120.13(1)(c).

**FINDINGS OF FACT**

The record contains a letter entitled "Notice of Expulsion Hearing," dated May 9, 2017, from the district administrator of the Weyauwega-Fremont School District School District. The letter advised that a hearing would be held on May 15, 2017 that could result in the pupil's

expulsion from the Weyauwega-Fremont School District School District through her 21st birthday. The letter was sent separately to the pupil and her 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 the pupil brought a “bladed knife” to school and kept it in her locker. The knife was found during a locker search.

The hearing was held in closed session on May 15, 2017. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 board 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 school board further found that the student's expulsion was in the district's best interests<sup>1</sup>. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated May 16, 2017, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through remainder of the 2016-17 school year. Minutes of the school board expulsion hearing and an 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

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<sup>1</sup> Wis. Stat. § 120.13(1)(c)1. states that the school board must be “satisfied that the interest of the school demands the pupil’s expulsion.”

specific charge that the pupil brought a knife to school, and that issue was proven at the expulsion hearing, the pupil was given procedural due process.

The pupil's mother raises a second issue that the school superintendent was not impartial. The school superintendent acted in an appropriate manner in this hearing. During the hearing, the school board members were asked if they, as the decision makers, had any issues with impartiality or any preconceived opinion of the matter, and they all answered negatively. There is no reason to believe any differently. More importantly, the school board – not the school superintendent – is the one charged with ordering expulsion. The pupil's mother raises a third issue that the terms of the expulsion are confusing and wishes to have them clarified. The district, in its response restates the conditions for reinstatement, but this does not correct the issues in the order. The order states:

[The pupil shall] be expelled for the remainder of the 2016-2017 school year. She then would be eligible to begin classes again on September 5, 2017 which is the start of the 1<sup>st</sup> Semester/Quarter1. During the expulsion time period she will be required to participate/enroll in summer school to stay on track for graduation. Secondly, [the pupil] will be required to deliver four curricula lessons on school safety and decision making to Elementary students in conjunction with our K-8 school counselor Mrs. Storek during the first semester. Finally, [the pupil] will need to seek out professional counseling and have a mental health evaluation completed prior to a potential return to school meeting the week prior to the start of the 2017-2018 school year with Mr. Schroeder. Upon successful completion of the evaluation and meeting with Mr. Schroeder and with Weyauwega-Fremont Board of Education approval she could then successfully return to school beginning on the first day of the 2017-2018 school year.

It is clear the school board was attempting to be fair in its administration of justice in this case. It appears the school board was attempting to provide an expulsion with early reinstatement pursuant to the pupil meeting early reinstatement conditions. However, that is not how the order is written. The school board did not properly draft the order in compliance with the law.

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 demand the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, the pupil's mother challenges the accuracy of the notice. She notes that the hearing notice states the Board of Education (Board) would conduct a hearing on whether the pupil engaged in disorderly behavior or was involved in fighting with the intent to purposefully hurt another. The notice further states that the specific behavior is that the pupil brought a knife to school which was found during a locker search. The notice goes on to state the statutory ground as the basis for expulsion is 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 at school or. . . any employee or school board member of the District."

The district's notice is confusing. While it is possible that "disorderly behavior" could be attributed to bringing a knife to school, it appears this relates to the alleged incident the previous night just as the second charge does. It appears as if the school district never had any information that the pupil engaged in fighting "while under the school's jurisdiction" and never intended to pursue this line of inquiry at the hearing. Private behavior off school grounds and not under the supervision of a school authority that does not threaten the school's property, the property, health or safety of others at school, a school employee, or school board member is not an expellable offense. However, this issue does not rise to reversible error. Because the notice contains the

Specifically, the school board gave an expulsion period that ended at the end of 2016-2017. That is to say, as written, the student's expulsion ends at the conclusion of the 2016-2017 school year, which is defined in Wis. Stat. § 115.001(13) as June 30, 2017. The school board then attempts to put early reinstatement conditions in place. However, under Wis. Stat. § 120.13(1)(h)1.am., "early reinstatement" is defined as reinstatement of an expelled student *before* the expiration of the term of expulsion specified in the order. (Emphasis added.) Pursuant to Wis. Stat. § 120.13(1)(h)1.b. an "early reinstatement condition" is a condition that "a pupil is required to meet before he or she may be granted early reinstatement or . . . after his or her early reinstatement *but before the expiration of the term of expulsion.*" (Emphasis added.) Given the board's order that the term of expulsion is through the remainder of the 2016-17 school year, the only condition that arguably can be met here is that of enrolling in summer school, depending on the dates. It appears as if the pupil in this case did enroll in summer school, thereby meeting that condition.

The other conditions all occur after the term of expulsion. Not only is placing a condition on a student after the term of expulsion not permitted by law, there are precedential cases which have addressed this issue. All of these cases held that once the term of expulsion had ended, the pupil regains the full state constitutional rights to an education. Therefore, any conditions on readmission or continued attendance are unenforceable. See *Ben J. by New Glarus Sch. Dist.*, (504) Dec. 19, 2003, *Miranda V. by Howard-Suamico Sch. Dist.*, (224) Mar. 22, 1994, *Lori L. by Baraboo Sch. Dist.*, (227) Apr. 22, 1994, *Paul O. by Florence Cty. Sch. Dist.*, (232) June 28, 1994, and *J. H. by West Bend Sch. Dist.*, (721) Aug. 18, 2014.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. However, the reinstatement conditions contained in the order do not

comply with the law, and therefore any conditions which were to take place after the expiration of the expulsion term are unenforceable.

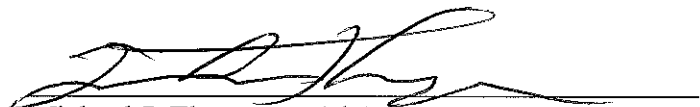
### CONCLUSIONS OF LAW

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). However the order did not comply with the requirements of Wis. Stat. §§ 120.13(1)(h)1.am and b.

### ORDER

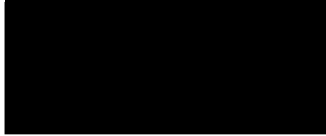
IT IS THEREFORE ORDERED that the expulsion of M [REDACTED] M [REDACTED] by the Weyauwega-Fremont School District School District Board of Education is affirmed and that the term of the expulsion ended June 30, 2017.

Dated this 10<sup>th</sup> day of Nov., 2017



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

Parties to this appeal are:



Scott Bleck  
District Administrator  
Weyauwega-Fremont School District School District  
410 E Ann Street  
Weyauwega, WI 54983

#### **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.

COPIES MAILED TO:



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