

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of S■■■■ A■■■■</p> <p>by Chilton Public School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 17-EX-09</p>
--	---

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 and received by the Department of Public Instruction on November 6, 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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated October 5, 2017, from the district administrator of the Chilton Public School District. The letter advised that a hearing would be held on October 16, 2017 that could result in the pupil's expulsion from the Chilton Public School District through the pupil's 21st birthday. The letter was sent separately to

the pupil, her parents, and her grandparents by certified mail.¹ 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 threatened an act of violence toward students and staff of Chilton High School.

The hearing was held in closed session on October 16, 2017. The pupil and the pupil's grandparents appeared at the hearing without counsel, and the pupil's parents appeared by telephone. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, the pupil's grandparents, and the pupil's 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 interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated October 23, 2017, was mailed separately to the pupil, the pupil's grandparents, and the pupil's parents. The order stated the pupil was expelled until the second semester of the 2019-2020 school year. Minutes of the school board expulsion hearing, exhibits presented during the hearing, and an electronic recording of the expulsion hearing are part of the hearing 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

¹ The appeal was filed by the pupil's parents, who live outside of Wisconsin. The pupil lives with her grandparents, who reside in Wisconsin and were listed as guardians in the pupil's records.

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 several issue(s) which require(s) consideration. First, the pupil's parents argue that the Notice of Expulsion Hearing was deficient because it included the text of Wis. Stat § 119.25, but did not explain that this section did not apply to the expulsion. The statutory requirements for a hearing notice is set forth by Wis. Stat. § 120.13(1)(c)4., which requires notification that the statutes related to pupil expulsion are Wis. Stat. §§ 119.25 and 120.13(1). Though the department has previously determined that citation to Wis. Stat. § 119.25 is not necessary for most districts because Wis. Stat. § 119.25 only applies to Milwaukee Public Schools, compliance with the plain language of the statute does not constitute a deprivation of due process. See *E.C. by Oconomowoc Area Sch. Dist. Bd. of Educ.*, (737) June 14, 2016. Minimum due process does not require the school district to provide legal advice or guidance regarding these statutes.

The second issue raised by the appeal is that the school district refused to provide the pupil's parents with any of the evidence, documentation, and related information included in the district's "Hearing Packet" prior to the hearing. School districts are strongly encouraged to provide copies of exhibits and evidence prior to an expulsion hearing to allow pupils and the pupil's family the ability to best prepare for a hearing. However, the state superintendent has consistently held that school districts are not required to do so. *M.J. by Mount Horeb Sch. Dist. Bd. of Educ.*, (710) Jan. 28, 2014; *B.S. by Marshall Sch. Dist. Bd. of Educ.*, (626) July 11, 2008. Failure to provide exhibits and evidence prior to the hearing is not reversible error.

Third, the appeal alleges that the school district failed to provide the parents with a copy of the Hearing Packet at the hearing. Typically, the failure to provide copies of all documents presented to the board at an expulsion hearing to the pupil and the pupil's parent would be reversible error. *B.S. by Marshall Sch. Dist. Bd. of Educ.*, (626) July 11, 2008. However, the Hearing Record indicates that the parents reside out of state, and that the pupil attends the District while living with the pupil's grandparents. The grandparents were provided copies of the Hearing Packet at the hearing, the evidence contained in the Hearing Packet was presented and discussed during the hearing, and the pupil's parents did not raise an objection at the hearing to request to see the materials. Under these specific circumstances, the school district met its minimum due process obligation to provide the Hearing Packet materials by providing those materials to the pupil and the pupil's grandparents.

Fourth, the appeal alleges that the Hearing Packet contained a number of errors and omissions. The sufficiency and credibility of evidence are left to the discretion of the school board. *D.S. by the Nicolet Union High School Dist.*, (702) January 18, 2013. A school board's findings will be upheld if any reasonable view of the evidence sustains them. *R.W. by the Kenosha School Dist.*, (631) September 25, 2008. On review of the Hearing Record, a substantial amount of undisputed evidence indicates the pupil communicated via social media an intent to bring guns and shoot up the school. A reasonable view of the evidence supports the findings of the board.

Finally, the appeal alleges that the pupil's parents were not properly notified of the Board's decision to expel the pupil. The Hearing Record indicates the pupil, the pupil's parents, and the pupil's grandparents were sent copies of the expulsion order in compliance with Wis. Stat. § 120.13(1)(c) approximately one week after the Hearing. There is no statutory time limit as to when the written order must be provided, and so the school district's processing of the written expulsion

order in this matter does not present a reversible error. *B.S. by New London Sch. Dist. Bd. of Educ.*, (578) July 27, 2006.

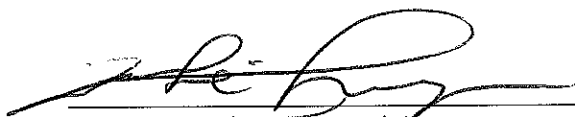
CONCLUSIONS OF LAW

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 S [REDACTED] A [REDACTED] by the Chilton Public School District Board of Education is affirmed.

Dated this 2nd day of January 2018



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

Parties to this appeal are:



Susan Kaphingst
District Administrator
Chilton Public Schools School District
530 W Main St
Chilton, WI 53014

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

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:



Susan Kaphingst
District Administrator
Chilton Public Schools School District
530 W Main St
Chilton, WI 53014

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