

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A [REDACTED] H [REDACTED]</p> <p>by Pecatonica Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 17-EX-11</p>
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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 Pecatonica Area School District Board of Education to expel the above-named pupil from the Pecatonica Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 1, 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 October 31, 2017, from the district administrator of the Pecatonica Area School District. The letter advised that a hearing would be held on November 6, 2017 that could result in the pupil's expulsion from the Pecatonica Area 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 which endangered the health and safety of others. The letter specifically alleged that on October 5, 2017, the pupil engaged in sexual contact and/or sexual intercourse with a person under the age of 16 while in a school parking lot.

The hearing was held in closed session on November 6, 2017. The pupil and his parents appeared at the hearing without counsel. 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 school board deliberated in closed session. The board found that the pupil did engage in conduct while at school which endangered the health and safety of others at school. 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 November 20, 2017, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing and a transcript of the 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 demand the pupil's expulsion.

The appeal letter in this case raises a number of issues which require consideration. First, the parents allege they were told conflicting information about their son's return to school, assignments, and an offer of an expulsion alternative agreement. The district disputes these claims. However, what did or did not occur with relation to the pupil's suspension, the assignments, or the alternative agreement are outside the scope of this appeal. It is 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. *A.M. by the Nicolet UHS School Dist.*, (712) January 31, 2014. The state superintendent must also ensure that basic due process was afforded in an expulsion hearing. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014. The appellant appears to argue that the school district did not comply with the suspension statute. Because violations of suspension law are outside the scope of the state superintendent's review, it is unnecessary for me to determine whether or not the school district complied with the suspension statute. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014, citing *Madison Metro. Sch. Dist. v. Wisconsin Dep't of Pub. Instruction*, 199 Wis. 2d 1, 13, 543 N.W.2d 843, 848 (Ct. App. 1995).

The appeal appears to argue that the expulsion of the pupil is unwarranted given that no criminal charges were brought against him and that the other party involved received no punishment. The quantum of proof in an expulsion hearing is a preponderance of the credible evidence. *Earl N. by the Milwaukee Sch. Dist. Bd. of Educ.*, (111) March 3, 1983. The fact that

no criminal charges were filed has no relevance to this case. The board is not required to find that a pupil engaged in a crime or even that the evidence that is presented is proven beyond a reasonable doubt. The board only has to find that the conduct met one of the statutory reasons for expulsion, here that the pupil endangered the health and safety of others, to a preponderance of the evidence. The board so found. Further, the state superintendent has held in prior decisions that unless there are exceptional circumstances, the state superintendent will not review whether an expulsion is excessively harsh. As such, school boards are afforded wide latitude in determining whether an expulsion is an appropriate response to alleged conduct. *T.R. by the Nicolet School Dist.*, (707) December 17, 2013. Furthermore, since the authority to “approve, reverse or modify the decision” was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has declined to modify the length of expulsions unless exceptional circumstances are present. *J.P. by the Chippewa Falls School Dist.*, (666) August 10, 2010.

A final issue raised by the appellants is that at the time of appeal, the appellants had not received a copy of the expulsion order. The district has provided an affidavit of mailing that shows the order was mailed on November 21, 2017. It is possible it had just not reached the pupil at the time of writing the appeal. In any event, the statute simply requires the mailing of the expulsion order, and the district has provided sufficient evidence of its compliance with this requirement.

Based on the above and my review of the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

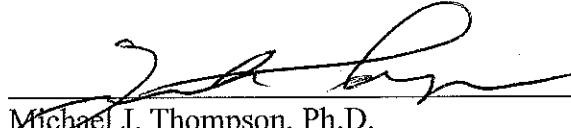
CONCLUSIONS OF LAW

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] H [REDACTED] by the Pecatonica Area School District Board of Education is affirmed.

Dated this 1ST day of February, 2018



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

Parties to this appeal are:

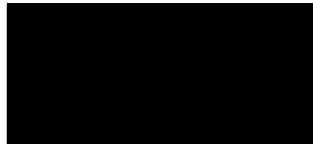
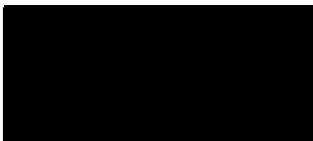


Jill Underly
District Administrator
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APPEAL RIGHTS

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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