

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T [REDACTED] E [REDACTED]</p> <p>by Northwood School District School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-06</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 Northwood School District Board of Education to expel the above-named pupil from the Northwood School District. This appeal was filed by the pupil’s guardian and received by the Department of Public Instruction on April 10, 2018.

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 Pupil Expulsion Hearing,” dated March 22, 2018, and mailed on March 23, 2018. The Notice advised that a hearing would be held on March 28, 2018, which could result in the pupil’s expulsion from the Northwood School District through the pupil’s 21st birthday. The Notice was sent separately to the pupil and his guardian by certified mail. The Notice alleged the pupil engaged in “conduct that endangers a person or

property, including making a threat to the health or safety of a person or making a threat to damage property” and “repeated refusal or neglect to obey school rules.” The Notice specifically alleged the pupil wrote lyrics from a song on the whiteboard of a classroom which read, “All the other kids with the pumped up kicks. You’d better run, better run, out run my gun.” The Notice also specifically alleged that on March 12, 2018, the pupil began a transition from a treatment center back to the classroom and was uncooperative and resistant to instruction during that period of transition.

The hearing was held in closed session on March 28, 2018. The pupil and his guardian 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 the pupil was “guilty of conduct that endangers a person or property, including making a threat to the health or safety of a person or damage to property.” There is no evidence in the hearing record that school board considered whether the interest of the school demands the student's expulsion.

The order for expulsion is dated April 23, 2018. The record does not indicate whether the order was mailed separately to the pupil and his parents. The order stated the pupil was expelled for “one full calendar year.” Minutes of the school board 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 demands the pupil's expulsion.

In reviewing the record in this case, I find the school district failed to comply with several necessary procedural requirements. First, a school board only has authority to expel a pupil based on one of several established statutory grounds specified in Wis. Stat. § 120.13(1)(c). *Alfred L. by Oconto Fall Sch. Dist.*, (338) Sept. 24, 1997. In this matter, the school district's expulsion order states the pupil was guilty of "conduct that endangers a person or property, including making a threat to the health or safety of a person or damage to property." This basis is not one of the established statutory grounds under Wis. Stat. § 120.13(1)(c). The board is without statutory authority to expel a pupil on the basis set forth by its order.

In addition, pursuant to Wis. Stat. § 120.13(1)(c), a school board may only expel a pupil if it is satisfied that the interest of the school demands the pupil's expulsion. *Todd N. by Elmwood Sch. Dist.*, (477) Aug. 22, 2002; *C.K. by the Wittenberg-Birnamwood School Dist.*, (168) May 7, 1990. There is no indication in the expulsion order or anywhere in the hearing record that the school board determined or even considered whether the interest of the school demands the pupil's expulsion. Based on the above, the decision to expel the pupil in this matter is without statutory authority and must be overturned.

Furthermore, the school district failed to provide proper notice to the pupil prior to the expulsion hearing as required by Wis. Stat. § 120.13(1)(c)4. The district's Notice to the pupil is deficient for several reasons. First, the Notice lists "conduct that endangers a person or property,

including making a threat to the health or safety of a person or damage to property” as grounds for expulsion, which is not a statutorily recognized basis for expulsion.

Second, proper notice must inform the pupil of the time-frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *L.W. by the Iowa-Grant School Dist.*, (720) August 19, 2014. The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *M.S. by the Milwaukee Public School Dist.*, (675) December 21, 2010.

In this matter, the notice describes a series of disciplinary issues occurring between March 12 and March 15, 2018. However, at the expulsion hearing, the school district administration presented evidence of the pupil violating school rules on several specific dates from September 8 to October 20, 2017. The administration explicitly presented this evidence to support the conclusion that the “song lyrics on the board put together with the other escalating angry behavior, create a threat to the safety and welfare of the other students and staff at Northwood.” Therefore, the notice did not adequately inform the pupil and his guardian of the “particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based ...” as required by Wis. Stat. § 120.13(1)(c)4. *See E.D. by the Grafton School Dist.*, (642) April 21, 2009. The deficient hearing notice constitutes an additional and independent basis for overturning this expulsion.

As a final word of caution, due process in the context of expulsion proceedings requires pupils be provided the opportunity to be heard at a meaningful time and in a meaningful manner by a fair and impartial decision maker. *Joshua S. by Madison Metro Sch. Dist.*, (525) Oct. 20, 2004. Generally, the presumption is that public officials will discharge their duties fairly, impartially, and in good faith. *Danielle A.W. by Baron Area Sch. Dist.*, (310) Jan. 31, 1997. In

this matter, the school board has already heard evidence and made a determination of the pupil's guilt at a hearing held in violation of statutory procedures meant to ensure due process for the pupil. If the school board decides to rehear this expulsion and render a decision on the same facts previously considered, this context could serve as evidence demonstrating a high probability of school board bias. *Kathleen W. by Tri-Cty. Area Sch. Dist.*, (130) May 10, 1985. If the school board decides to reinitiate expulsion proceedings in this matter, the school board may consider utilizing an independent hearing panel or officer in order to eliminate this probability of bias. See Wis. Stat. § 120.13(1)(e).

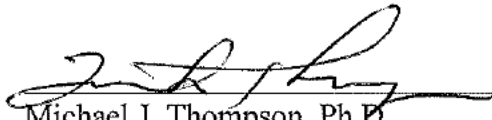
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of §120.13(1)(e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T [REDACTED] B [REDACTED] by the Northwood School District School District Board of Education is overturned.

Dated this 8th day of June, 2018



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

Parties to this appeal are:

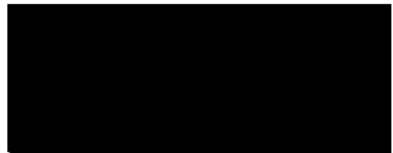


Jean Serum
District Administrator
Northwood School District School District
N14463 Highway 53
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APPEAL RIGHTS

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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