

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of	DECISION AND ORDER
A [REDACTED] W [REDACTED]	Appeal No.: 18-EX-12
by Crivitz School District Board of Education	

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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 Crivitz School District Board of Education to expel the above-named pupil from the Crivitz School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 12, 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 Wis. Stat. § 120.13(1)(c).

**FINDINGS OF FACT**

The underlying facts in this case are not in dispute. On March 22, 2018, the pupil ingested an anti-depressant pill. The pupil did not have a prescription for the pill. Rather, she obtained the pill from a friend. After taking the pill, the pupil became ill and went to the nurse's office. School administrators subsequently investigated. The pupil admitted she did not have a prescription for the pill. The pupil further admitted that she obtained the pill from a friend.

By a letter dated May 1, 2018, the school district notified the pupil and her father that a hearing would be held on May 9, 2018, that could result in the pupil's expulsion from the Crivitz School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her father 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 included the particulars of the conduct, namely that the pupil took possession of a prescription drug from another student and the time that this took place. The notice further stated that the hearing would be held in closed session.

The hearing was held in closed session on May 9, 2018. 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 father 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 May 9, 2018, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through her 21st birthday. The order also allowed for early reinstatement, as early as the start of the 2018 summer school session, if the pupil completed a registered substance abuse counseling program. 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 district demand the pupil's expulsion.

The appeal letter in this case raises four issues which require consideration. First, the appellant argues that the notice of the expulsion hearing is defective because it did not contain the full statutory citation for basis of the expulsion. Specifically, the appellant argues that the notice should have cited Wis. Stat. § 120.13(1)(c)1 instead of just Wis. Stat. § 120.13(1)(c). In other words, the appellant argues that the failure to include the subdivision 1 is reversible error. It is not.

As the respondent correctly points out, Wis. Stat. § 120.13(1)(c)4.a. simply requires notice of two things: (1) the specific statutory grounds under subd. 1., 2., or 2m.; and (2) the particulars of the pupil's alleged conduct. While a school board may wish to specifically cite the subdivision where the statutory grounds are for the expulsion, this is unnecessary when the expulsion notice contains the specific clause within the subdivision. Further, adding the specific subdivision may not be helpful if the basis is one of those listed under subdivision 1. That subdivision lists multiple, sometimes disparate bases for expulsion, such as conveying a bomb threat and repeatedly refusing to obey rules. Here, it is clear that the statutory basis for the expulsion was that the pupil engaged in conduct while at school which endangered the property, health, or safety of others. As a result, the expulsion notice is sufficient.

The appellant next argues that the expulsion notice was defective because the notice stated that the expulsion hearing would be held in closed session. Under Wis. Stat. § 120.13(1)(c)4.d., the hearing “shall be closed” upon the request of the pupil. The appellant argues that the school board’s decision to unilaterally decide that the hearing shall be closed deprived the pupil of her right for an open hearing. I disagree. As repeatedly held by the state superintendent, the plain language of the expulsion statute only gives the pupil the right to a closed hearing, not an open hearing. *See e.g., Marc G. by Maple Sch. Dist.*, (213) Dec. 20, 1993; *Benjamin L. by Maple Sch. Dist.*, (214) Dec. 28, 1993; *Rebecca S. by Janesville Sch. Dist.*, (28) May 8, 1995. Further, a board may, on its own, elect to hold the hearing in closed session. *Courtney R. by Germantown* (278) Mar. 21, 1996. A school board may have good reason to do so. For example, the expulsion hearing may discuss matters involving protected information about other students and, as a result, a closed session is necessary.

Third, the appellant argues that the notice was defective because it only stated that the statutes related to pupil expulsion are Wis. Stat. § 120.13(1). The notice did not reference Wis. Stat. § 119.25. This is no basis for reversal because Wis. Stat. § 119.25 is only applicable to Milwaukee Public Schools. *See E.C. by Oconomowoc*, (737) June 13, 2016. Failure to cite an irrelevant statute did not deprive the pupil of notice.

Finally, the appellant argues that the facts of the case do not support a conclusion that pupil’s conduct endangered others. The appellant also appears to argue that the underlying conduct should not result in an expulsion. The state superintendent has held in numerous decisions that possession of a prescription drug does endanger the health or safety of others. *See e.g., A.B. by West DePere Sch. Dist.*, (744) Nov. 4, 2016.

Regarding the severity of the discipline, the state superintendent will only exercise his authority to modify an expulsion in extraordinary circumstances, such as when the severity of the expulsion term shocks the conscience when compared to the underlying conduct and any mitigating factors. Here, there are several mitigating factors: the pupil has a clean discipline record; the pupil self-reported the misconduct; the pupil was honest with district administrators during the investigation; and the pupil appeared to be self-medicating. However, the severity of expelling the pupil is tempered by the early reinstatement conditions. The pupil can be readmitted as early as June 2018 (i.e., when this appeal was filed) if she completes a substance abuse counselling program within one month of the expulsion. This is entirely reasonable. As such, there are no extraordinary circumstances warranting a modification of the expulsion term.

In reviewing the record in this case, I find the school district Complied with all of the procedural and substantive requisites. I, therefore, affirm this expulsion.

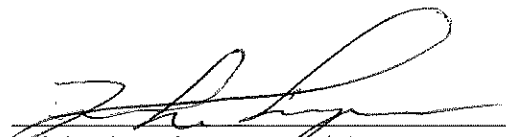
### CONCLUSIONS OF LAW

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 and substantive requirements of Wis. Stat. § 120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of A [REDACTED] W [REDACTED] by the Crivitz School District Board of Education is AFFIRMED.

Dated this 10 day of August 2018

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

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Parties to this appeal are:



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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.

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