

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

R [REDACTED] A [REDACTED]

by Nicolet Union High School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-20

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 Nicolet Union High School District Board of Education to expel the above-named pupil from the Nicolet Union High School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 2, 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 reviewing authority is specified in Wis. Stat. § 120.13(1)(c).

FINDINGS OF FACT

The underlying facts in this case are not in dispute. In June of 2018, the pupil posted a video on social media in which the pupil states, "Bitch, I'll cap yo' shit, nigga," while holding a gun. On September 8, 2018, the district received an anonymous report from a person claiming to be a Nicolet High School student. The reporter stated they felt threatened, and the report included a copy of the video.

On October 2, 2018, the school district notified the pupil and her parents that the school board would hold a hearing on October 11, 2018, and that the hearing could result in the pupil's expulsion from the Nicolet Union High 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 not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under supervision of a school authority. The letter included the particulars of the alleged conduct. The notice further stated that the hearing would be held in closed session.

The hearing was held in closed session on October 11, 2018. The pupil and her parents appeared at the hearing with counsel. At the hearing, school district administration presented evidence concerning the grounds for expulsion. The pupil, her parents, and her attorney 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 engaged in conduct while not at school or while not under supervision of a school authority, which endangered property, health or safety of others at school or under supervision of a school authority. The school board further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated October 18, 2018, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday. Copies of the expulsion hearing notices, the Order of Expulsion, the minutes of the school board expulsion hearing, a transcript of the hearing, and expulsion hearing exhibits 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 demands the pupil's expulsion.

The appeal letter in this case raises two issues that require consideration. First, the appellant argues that the school board failed to cite specific statutory authority for the expulsion by referencing Wis. Stat. § 120.13(1)(c), rather than the more specific subdivision, Wis. Stat. § 120.13(1)(c)1. However, the expulsion order did state the specific statutory basis for the expulsion, finding that the pupil "while not at school or while not under the supervision of a school authority engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority." By quoting this statutory language, the school board correctly cited specific statutory authority for the expulsion. Failing to include the more specific subdivision in the expulsion order is not a reversible error.

Second, the appellant argues that the school board's decision is not supported by the facts in the hearing record. The appellant claims that there is insufficient evidence in the record to conclude that the pupil's social media post endangered the property, health or safety of others at school or under the supervision of a school authority. It has been repeatedly held that arguments concerning the sufficiency of evidence are generally outside the scope of the state superintendent's review, and a school board's findings will be upheld if any reasonable view of the evidence

sustains those findings. *C.B. by the Germantown School Dist.*, (763) June 12, 2018; *E.C. by the Oconomowoc Area Sch. Dist.*, (737) June 14, 2016; *L.P. by the Whitewater Unified School Dist.*, (351) Mar. 31, 1998.

Here, a reasonable view of the evidence sustains the school board's findings. There is no dispute that the pupil posted a video on social media stating, "Bitch, I'll cap yo' shit, nigga" while holding a real gun. The pupil admits that fellow district students viewed the video and commented on the video through social media. The school district received an anonymous report of the posted video from an individual claiming to be a school district student who perceived the video as a threat to the safety of the student and other district students. The pupil admitted she was not surprised that a classmate would feel threatened by the video, only that she was surprised someone would report the video to the school district. The pupil and her father described the family's familiarity with guns and that the student had handled her father's gun in the video. The school district administration testified as to the serious nature of the post and the administration's perception of the video as a threat. Based on this evidence, the school board could reasonably conclude that the post endangered the property, health or safety of others at school or under the supervision of a school authority.


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 R [REDACTED] A [REDACTED] by the Nicolet Union High School District Board of Education is affirmed.

Dated this 2nd day of January, 2019



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

Parties to this appeal are:



Robert Kobylski
District Administrator
Nicolet Union High School District
6701 N. Jean Nicolet Rd.
Glendale, WI 53217

Nicolet Union High School District Board of Education
6701 N. Jean Nicolet Rd.
Glendale, WI 53217

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:



Robert Kobylski
District Administrator
Nicolet Union High School District
6701 N. Jean Nicolet Rd.
Glendale, WI 53217

Nicolet Union High School District Board of Education
c/o Gary M. Ruesch and Claire E. Hartley
Buelow Vetter Buikema Olson & Vliet, LLC
20855 Watertown Road, Suite 200
Waukesha, WI 53186