Decision and Order No.: 775

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of O[redacted] O[redacted] by Nicolet Union High School District Board of Education	DECISION AND ORDER Appeal No.: 18-EX-19

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 8, 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 notice of expulsion hearing dated October 5, 2018, from the superintendent of the Nicolet Union High School District. The notice advised that a hearing would be held on October 15, 2018, that could result in the pupil's expulsion from the Nicolet Union High School District through the pupil's 21st birthday. The notice was sent separately to the pupil and his parents by certified mail and first class mail. The notice alleged that the pupil "engaged in

conduct while not at school or while not under supervision of school authority, which endangers property, health or safety of others at school or under supervision of school authority." The notice specifically alleged that on or about February 19, 2018, the pupil posted a Snapchat message in which the pupil posed with an Airsoft gun with a text stating, "Florida 2.0 coming soon."

The hearing was held in closed session on October 15, 2018. The pupil and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his parents, and his counsel were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

At the hearing, the district administration presented evidence regarding the alleged Snaphchat message. The post was made on February 19, 2018, five days after the school shooting at the Stoneman Douglas High School in Parkland, Florida. Seventeen students and staff members were killed in that attack. At the time of the Snapchat message, the pupil was not enrolled at the district, but was enrolled in a private school. The district became aware of the Snapchat message when, at the end of February, 2018, the pupil attempted to enroll in the district. In the process of the pupil's enrollment, the district suspected the pupil to have sent the Snapchat message based on media reports. When questioned by district administration, the pupil admitted to sending the Snapchat message, and that the pupil disenrolled from the private school prior to the start of an expulsion process there. Law enforcement investigating the Snapchat message discovered that the pupil had other images related to school shootings on his smart phone. Upon learning of the pupil's Snapchat message, the district reviewed the implementation of its security protocols to ensure those protocols were "tight and engaged".

The pupil's family decided to home school the pupil until September 2018, at which point the pupil enrolled in the district. Upon enrollment, the district suspended the pupil on October 1, 2018, and subsequently initiated the expulsion process as described above.

After the expulsion 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 the 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 his parents. The order stated the pupil was expelled through his 21st birthday. The notice of expulsion hearing, order for expulsion, minutes of the school board expulsion hearing, transcript of the hearing, and exhibits introduced at the hearing are all part of the record.

DISCUSSION

The expulsion statute – Wis. Stat. § 120.13(1)(c) – gives school boards the authority to expel a pupil 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 supported by a reasonable view of the evidence, and that the school board is satisfied that the interest of the school district demand the pupil's expulsion.

The appeal raises three issues that require consideration. First, the appellant argues that the school board did not have statutory authority to expel the pupil because he was not an enrolled

pupil at the time he engaged in the alleged misconduct. The relevant statutory language disputed by the parties reads as follows:

> The school board may expel a pupil from school whenever it ... finds that a 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 or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled.

Wis. Stat. § 120.13(1)(c)1.

The appellant argues that the phrase "of the school district in which the pupil is enrolled" modifies the entire language quoted above, such that a school board only has authority to expel a pupil that engages in conduct while enrolled in its district. However, "of the school district in which the pupil is enrolled" only modifies "any employee or school board member." Wis. Stat. § 120.13(1)(c). Conduct that "endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled" was added as independent statutory grounds for expulsion in 1994 by 1993 Wis. Act 284. This added language did not modify or restrict the existing statutory grounds for expulsion. *See* Wis. Stat. § 990.001(7). Because this language does not modify the authority relied upon by the school board in this matter, the explicit language of the statute does not categorically prohibit a school board from expelling a pupil based on conduct that occurred prior to the pupil's enrollment.

To be clear, this interpretation does not give a school board blanket authority to expel a pupil based on that pupil's conduct at any school, public or private, that occurred at any time, regardless of whether that conduct had any relation to the expelling school district. The school board remains constrained by the articulated statutory grounds for expulsion. Relevant to this case, in the terms "at school" and "the supervision of a school authority", as used in Wis. Stat. § 120.13(1)(c)1., the word "school" refers to a school governed by the school board, rather than

simply any public or private school. Therefore, in this matter, the school board must find that the pupil engaged in conduct which endangered the property, health or safety of others at a Nicolet school or under the supervision of a Nicolet school authority. It would be insufficient to find that the pupil endangered others at the private school alone.

The appellant asserts that the evidence fails to sustain the school boards findings that the pupil did endanger the health or safety of others at a Nicolet school or under the supervision of a Nicolet school authority. Upon review, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *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. The board has discretion to give weight to the evidence and arguments, as it deems appropriate and to judge the credibility of witnesses. See e.g. *State ex rel.. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W.2d 689 (1976); *D.S. by Nicolet Union high School Dist.*, (702) January 18, 2013.

Here, the record contains sufficient evidence that the pupil endangered the safety of others at a Nicolet school or under the supervision of a Nicolet school authority. The pupil's Snapchat message could reasonably be perceived as the pupil making a threat to repeat the school shooting that took place in the Stoneman Douglas High School in Parkland, Florida. No part of this message is limited to a specific school. A reasonable view of the evidence does not require the school board to assume a threat to execute a school shooting exclusively endangered the school currently attended by the pupil. As prior school shootings demonstrate, an individual does not need to attend a school to be a threat to that school. It was a former student that killed 28 students and staff in the Sandy Hook Elementary School shooting in Newtown, Connecticut, not an actively enrolled student. The pupil sent the Snapchat message shortly before the pupil discussed enrollment with

the district. The district administration testified to the school board that they perceived the Snapchat message as a threat that endangered the Nicolet schools. And finally, the district administration responded to the perceived threat contemporaneously by reviewing safety protocols.

Given this evidence in the record and the degree of risk a threat to execute a school shooting poses to a school district, the school board could reasonably conclude that the pupil engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority. Absent extraordinary circumstances, it is inappropriate to second-guess a school board's decision. *C.T. by the Milwaukee Public School Dist.*, (718) May 22, 2014.

Second, the appellant argues that the district's notice of hearing was deficient, because it misquoted the relevant statutory authority. Specifically, the appellant argues the district's use of the word "endangers" in the hearing notice, rather than the correct tense "endangered" renders the notice deficient. A student facing expulsion is entitled to timely and adequate notice of the charges against him or her so as to allow a meaningful opportunity to be heard. *E.D. by the Grafton School Dist.*, (642) April 21, 2009. I cannot conclude that stating "endangers" rather than "endangered" when quoting the statute was an intentional strategic error, or otherwise impacted the pupil's meaningful opportunity to be heard. The expulsion notice properly cited the statute by number, and the notice was sufficiently specific as to the particulars of the allegations against the pupil. *L.W. by the Iowa-Grant Sch. Dist.*, (720) August 19, 2014. The notice is adequate because, despite the incorrect tense of the word "endanger", the notice sufficiently informed the pupil and his parents of the statutory grounds and particulars of the pupil's alleged conduct upon which the expulsion proceeding was based. Wis. Stat. § 120.13(1)(c)4.

Finally, the appellant argues that the school board based its decision solely on a law enforcement record. The state superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his or her investigation, including the statements of other people, when there are facts establishing the reliability and probative value of such testimony. *C.M. by the West Allis-West Milwaukee School Dist.*, (242) Dec. 21, 1994. Pursuant to Wis. Stat. §§ 118.125(5) and 118.127, school districts are prohibited from using law enforcement records as the "sole basis" for expelling a pupil. Though the district did introduce law enforcement records at the hearing, the district also introduced evidence independent of these records that was based on the district's own investigation. Most significantly, the pupil admitted to the alleged conduct, both as part of the district's independent investigation and at the hearing. As such the school board did not base its decision solely on law enforcement records. *N.P. by the Wisconsin Dells School Dist.*, (719) June 23, 2014.

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 C[redacted]O[redacted] by the Nicolet Union High School District Board of Education is affirmed.

Dated this 10 day of January, 2019

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