Decision and Order No.: 840

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of by Rosendale-Brandon School District Board of Education	DECISION AND ORDER Appeal No.: 23-EX-15

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 Rosendale-Brandon School District Board of Education to expel the above-named pupil from the Rosendale-Brandon School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on June 27, 2023.

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 record contains a letter entitled "Notice of Expulsion Hearing," dated May 3, 2023, from the superintendent of the Rosendale-Brandon School District. The letter advised that a hearing would be held on May 9, 2023 that could result in the pupil's expulsion from the Rosendale-Brandon 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 or while under the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that:

> On Monday, May 1, 2023, Superintendent Wayne Weber was notified by School Resource Officer and Fond du Lac County Sheriff's Deputy Steve Kastenschmidt that the Sheriff's Office and the Federal Bureau of Investigation (FBI) were jointly investigating a report of a threat of school violence that was shared on social media. The social media post was from four days prior. It stated, "My friend showed me a drawing of our school with his plan of shooting it up today" The FBI was able to find the author of the social media post, a Rosendale-Brandon Middle School student, and Deputy Kastenschmidt interviewed this student at the student's house. The student told Deputy Kastenschmidt that during or near the week of April 10, [the pupil] drew a map of the middle school wing of Rosendale Intermediate School. When the student asked [the pupil] why he was drawing the map, [the pupil] stated that he was going to shoot up the school.
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> [The pupil] was later interviewed by Deputy Kastenschmidt, FBI Agent Kathrine Karlsen, and Wayne Weber. [The pupil] admitted to drawing the map during science class earlier in April. He said he did not really know why he drew the map other than he was bored while watching a science video. [The pupil] also admitted that when a classmate asked him why he had the map, [the pupil] stated that he was going to shoot up the school.

The hearing was held in closed session on May 9, 2023. 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 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 district demand the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated May 16, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the age of 21, and provided that the pupil may be immediately readmitted to complete core coursework

from home/virtually for the remainder of the 2022-2023 school year. The order further provided that the pupil may be readmitted for on-premises 2023 summer school and activities and on-premises learning for the 2023-2024 school year provided that certain conditions are met. The order provided that upon the pupil's graduation, the expulsion will be expunged from his record if he has met all conditions set forth in the order. Minutes and an audio recording of the 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 demands the pupil's expulsion.

The appeal letter in this case raises five issues which require consideration. First, appellant contends that the board's finding that the pupil endangered the property, health and safety of others is not supported by the factual record. Appellant contends that the pupil made a private joke that another boy shared three weeks later on TikTok and that "[a]t no point did this private joke between two boys ever endanger the property, health or safety of others." For purposes of the relevant statute, "conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property." Wis. Stat. § 120.13(1)(c)1. It is undisputed that the pupil said he was going to shoot up the school. On its face, that statement is a threat to the health or safety of individuals at the school and a threat to

damage property and falls within the statutory definition of "conduct that endangers a person." The definition contains no exception for jokes. A school board's findings will be upheld if any reasonable view of the evidence sustains them. *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020). Although the school resource officer testified that in his opinion, the pupil's conduct was not dangerous, he also testified that the pupil admitted telling his friend, "I'm going to shoot up the school tomorrow." The district superintendent testified that the pupil's conduct was dangerous and explained the reasons that he believed the conduct was dangerous. The board's conclusion that the pupil did endanger others was supported by a reasonable view of the evidence.

Second, appellant contends that the record contains no evidence that the pupil's behavior caused disruption to the educational interests of other students. Appellant argues that the pupil cannot be held liable for an out-of-school decision another boy made three weeks later. It was not necessary for the board to conclude that the pupil's behavior disrupted the educational interests of other students to meet the statutory requirements to expel the pupil. The board was only required to find that the pupil endangered others and be satisfied that the interest of the school demands the pupil's expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand expulsion. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011). As already discussed, the board's conclusion that the pupil endangered others was reasonable. Thus, it was not unreasonable for the board to determine that the interest of the school demands expulsion.

Third, appellant contends that the pupil did not violate any school rules. Whether this is true is irrelevant because the pupil was not expelled for violating school rules. Instead, he was expelled for engaging in conduct while at school which endangered the property, health or safety of others.

Fourth, appellant contends that the pupil's statement is free speech protected by the First Amendment and was not a true threat. The Wisconsin Supreme Court has previously held that a student may be disciplined by a school for speech that was not a true threat. *See In re Douglas D.*, 2001 WI 47, ¶ 48, 243 Wis. 2d 204, 240, 626 N.W.2d 725, 743 ("it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse."). In that case, the student completed a creative writing assignment in which he implicitly threatened to cut off his teacher's head. The Court concluded that the writing assignment did not constitute a true threat, and, therefore, that the student could not be prosecuted criminally for writing it. However, the Court emphasized that

> By no means should schools interpret this holding as undermining their authority to utilize their internal disciplinary procedures to punish speech such as Douglas's story. Although the First Amendment prohibits law enforcement officials from prosecuting protected speech, it does not necessarily follow that schools may not discipline students for such speech.

Id. at ¶ 42. Appellant cites court cases that applied the true threat analysis to criminal conduct or criminal statutes, not to expulsions. The only case cited by appellant that involved students is *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). *Tinker* involved political speech, not a threat to shoot up a school. In *Douglas D.*, the Wisconsin Supreme Court discussed *Tinker* while describing the application of the First Amendment in the school setting:

> To be sure, students do not shed their First Amendment rights at the schoolhouse gate. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Thus, like law enforcement officials, educators may not punish students merely for expressing unpopular viewpoints. *See id.* at 509.

> However, the First Amendment “must be ‘applied in light of the special characteristics of the school environment.’” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (quoting *Tinker*, 393 U.S. at 506, 89 S.Ct. 733). Unlike other instruments of the State, schools are entrusted with a unique role in our society—to mold our children into responsible and wise adult citizens. *See Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) (describing schools as “the principal instrument in awakening the child to cultural values”). This “educational mission” is not limited to academics. *See Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986). Rather, it also entails many other responsibilities—adviser, friend, counselor, and, all too often, parent-substitute. *See Goss v. Lopez*, 419 U.S. 565, 594 (1975) (Powell, J., dissenting). Pursuant to these responsibilities, educators must inculcate in our children “the habits and manners of civility.” *Bethel Sch. Dist.*, 478 U.S. at 681 (citation omitted).
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> While the “fundamental values of ‘habits and manners of civility’ essential to a democratic society must, of course, include tolerance of divergent ... views, even when the views expressed may be unpopular,” they also include society's countervailing interest in teaching our children the boundaries of socially acceptable methods of discourse. *Id.* For this reason, in the school context, schools may limit or discipline “conduct ... which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” *Tinker*, 393 U.S. at 513. Hence, under some circumstances, schools may discipline conduct even where law enforcement officials may not. *Cf. Angelia D.B.*, 211 Wis.2d at 155, 564 N.W.2d 682 (holding that “inherent differences” between police officers and educators warrant different legal standards for searches and seizures).
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> Under the circumstances in the present case, we hold that the school had more than enough reason to discipline Douglas for the content of his story. Although the story is not a true threat, it is an offensive, crass insult to Mrs. C. Schools need not tolerate this type of assault to the sensibilities of their educators or students. The First Amendment does not compel “teachers, parents, and elected school officials to surrender control of the American public school system to public school students.” *Tinker*, 393 U.S. at 526 (Black, J., dissenting).

In re Douglas D., 2001 WI 47, ¶ 43-46 (emphasis added). In the present case, the superintendent testified that the police presence at school during the investigation caused anxiety in the school community. The record contains sufficient evidence to support the board’s finding that “[t]he incident created significant disruption among students, staff and families at school and consumed considerable time and resources. The threat created considerable fear among students, staff and families.” Appellant contends that any disruption was caused by the pupil’s friend’s decision to

post the pupil's comment on social media, and not by the pupil's private joke. Although the disruption might not have occurred without the friend's social media post, the post would not have occurred had the pupil not made the comment and had the comment not been so memorable that the friend was thinking about it weeks later. A reasonable view of the record supports the conclusion that the pupil's comment caused disruption at school. Therefore, the First Amendment does not protect the pupil from expulsion here. *See also R.B. v. Black River Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 742 (Sep. 23, 2016) (rejecting argument that a pupil's bomb threat that was allegedly a misguided attempt at humor was protected by the First Amendment: "Simply put, the First Amendment doesn't allow the pupil to make school bomb threats without facing repercussions.")

Finally, appellant contends that the expulsion violated district policy 447.3 because no other alternatives were considered. It is not the state superintendent's role to ensure the district's compliance with its own policies. *Madison Metr. Sch. Dist. Bd. of Educ.*, Decision and Order No. 832 (July 6, 2023); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020).

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

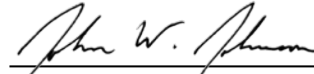
CONCLUSIONS OF LAW

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 Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [redacted] by the Rosendale-Brandon School District Board of Education is affirmed.

Dated this 17th day of August, 2023



John W. Johnson, Ph.D.
Deputy State Superintendent of Public Instruction

APPEAL RIGHTS

Wis. Stat. § 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 Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.
Parties to this appeal are:

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