

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of C [REDACTED] D [REDACTED] by Pardeeville School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 13-EX-11</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 Pardeeville School District Board of Education to expel the above-named pupil from the Pardeeville School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 16, 2013.

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). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated October 17, 2013, from the district administrator of the Pardeeville School District. The letter advised that a hearing would be held on October 22, 2013, that could result in the pupil's expulsion from the Pardeeville School District through up to the pupil's 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 under the supervision of school authority which endangered the property, health, or safety of others. The letter also alleged that the student engaged in repeated refusal or neglect to obey school rules. The letter specifically alleged that:

1. On September 18, 2013, the pupil confronted another student at the high school and repeatedly made statements to the student, including inviting the student to fight with him, in order to aggravate the other student into misbehaving. This conduct was in violation of the school's policy prohibiting bullying.
2. On October 1, 2013, at the high school, the pupil deliberately broke a correction tape dispenser on the desk of a special education assistant.
3. On October 9, 2013, the pupil violated the school rule prohibiting the use of cell phones at the high school on two separate occasions.
4. On October 2 and October 7, 2013, the pupil left high school grounds without permission during the school day.
5. On September 13, 16, and 25 and October 1, 2, 3, 4, 8, and 9, the pupil cut class during the school day and caused a disruption by refusing to go to his classes.

The School Administration believes proof of the above misconduct supports a finding that Christian engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others, and engaged in repeated refusal or neglect to obey the rules.

The pupil is identified as an exceptional education student. Pursuant to federal law a manifestation determination meeting was held on October 17, 2013. The pupil, his mother, his

therapist, and his county social worker were present. The pupil's multidisciplinary team ("M-team") determined that the conduct considered for expulsion was not a function of his disability.

The expulsion hearing was held in closed session on October 22, 2013. Neither the pupil, his parents, nor counsel for the pupil appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The audio recording of the hearing reveals that the pupil and his parents would have been given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations had they been present.

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 board also found that the pupil engaged in conduct that constituted repeated refusal or neglect to obey the rules. 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 October 29, 2013, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the age of 21. Minutes of the school board expulsion hearing and an audio recording of the expulsion hearing are part of the record.

DISCUSSION

School districts are limited-purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from Wis. Stat. § 120.13(1)(c), which establishes certain categories of offenses

that may be the basis for an expulsion and sets out specific procedures that must be followed in the expulsion process.

In reviewing an expulsion decision, the state superintendent must ensure 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 interests of the school district demand the pupil's expulsion. *Madison Metropolitan School District v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The appeal letter in this case raises one issue which requires consideration. The pupil's mother ("appellant") argues that expulsion was inappropriate because it was based on a manifestation determination that was, in turn, based upon an inaccurate IEP. Because the pupil is an identified exceptional education student, his case required a manifestation determination meeting to determine whether any causal relationship existed between his misconduct at issue and his disability. *Anita P. by the School Dist. of Janesville*, (124) Feb. 5, 1985 (p. 6). A school board may not expel a student for conduct or behavior that is causally linked to his or her disability. *William S. by the Suring School Dist.*, (98) June 17, 1982 (p. 2, footnote 1).

The appellant submitted evidence arguing that the pupil's IEP was based upon an inaccurate diagnosis, that the pupil's behavior was a function of the disability diagnosed by his therapist, and that the conditions of the IEP were not followed. I will address each issue in turn. First, the appellant's evidence consists of letters from the pupil's therapist and his social worker. The evidence was received by the superintendant with a letter from the appellant dated January 12, 2014, but it was not presented at the expulsion hearing. The superintendant's review is limited to the actual expulsion hearing record, and any evidence not submitted to the board at the expulsion hearing will not be considered on appeal. Omar C. by the Whitewater School Dist.,

(258) Aug. 11, 1995. New evidence may not be raised for the first time on appeal. Tyler M. by Silver Lake Jt 1 School Dist., (511) April 26, 2004. The pupil's mother had the opportunity to present evidence at the expulsion hearing, but she did not attend. Therefore, I will not take the letters from the pupil's social worker and therapist into account.

The manifestation determination was conducted by the pupil's M-team as required by law. A review of the record reveals that the team did take the therapist's alternative diagnosis into consideration, but lent it no credence without written documentation. There is no reason given for the necessity of written documentation when the therapist and social worker were present, in person, and available to testify and answer questions at the meeting. However, Ms. Ann Marie Markon, Assistant Director of Special Education, testified that the M-team made a determination that the pupil's conduct was not a function of his identified disability. A school board has no discretion but to rely upon the judgment of the M-team regarding the relationship between a pupil's conduct and his or her disability. Anita P. by the School Dist. of Janesville, (124) Feb. 5 1985 (p.6). Furthermore, the superintendent does not have the authority in an expulsion appeal to examine the appropriateness of a manifestation determination. Brian M. by the Lodi School Dist., (425) Oct. 23, 2000. Therefore, whether the pupil's conduct was a function of his disability is not for the superintendent to review. To challenge a manifestation determination, the pupil or appellant must use the special education due process appeal procedures provided under Wis. Stat. §115.80 and Wis. Admin. Code § PI Ch. 11. Matthew C. M. by the Cedarburg School Dist., (274) Feb. 14, 1996 (p. 5). The pupil's parent should consider whether they wish to pursue appealing the determination of the M-team in the appropriate venue.

Finally, special education issues outside of the manifestation determination requirement, such as whether the school followed the IEP requirements, are outside the scope of the superintendent's review. Michael M. by the Appleton Area School Dist., (411) April 25, 2000. Appellant must pursue other procedural avenues to appeal application of statutory special education requirements.

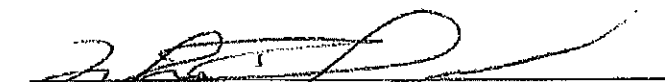
CONCLUSIONS OF LAW

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] D [REDACTED] by the Pardeeville School District Board of Education is affirmed.

Dated this 7th day of February 2014


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

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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