

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J [REDACTED] H [REDACTED]</p> <p>by West Bend School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 14-EX-07</p>
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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the West Bend School District Board of Education to expel the above-named pupil from the West Bend School District. The pupil's mother (appellant) filed this appeal. The Department of Public Instruction received the appeal on July 9, 2014.

In accordance with the provisions of Wis. Adm. 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). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board based its decision 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," (Notice) dated May 2, 2014, from the district administrator of the West Bend School District. The letter advised that a hearing would be held on May 15, 2014 that could result in the pupil's expulsion from the West Bend School District. The

letter did not contain any information regarding the possible length of the pupil's expulsion. Moreover, the letter stated that the school board would first determine whether the pupil had engaged in the alleged conduct and if the school board determined the allegations were true, the board would then determine "... what penalty, if any should be given." The letter also stated the school board would determine the "appropriate" penalty. The letter further stated the pupil was entitled to be represented by counsel at the hearing. Additionally, the letter to the pupil stated her parents could appeal an expulsion to the department.

The school district separately sent the letter to the pupil and her parents by certified mail. The pupil and her mother did not claim the letter from the post office. The letter alleged the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. Moreover, the letter alleged that the pupil repeatedly refused to and neglected to obey school rules. The letter specifically alleged that on April 28, 2014, the pupil gave prescription medicine to another pupil that was not prescribed for either pupil. In addition, the letter alleged that on April 29, 2014, the pupil was found in possession of non-narcotic prescription medication that was not prescribed for her.

The hearing was held in closed session on May 15, 2014. The pupil and her father 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. During her testimony, the pupil admitted she engaged in the alleged conduct.

After the hearing, the school board deliberated in closed session. One board member made a motion to accept the recommendations of the administration to "permanently" expel the pupil. The motion carried unanimously. The minutes of the school board hearing do not reflect that the board found that the pupil engaged in conduct while at school or while under the supervision of a school authority that endangered the property, health, or safety of others, namely the pupil was found in possession of non-narcotic prescription

medication that was not prescribed for her. Similarly, the minutes of the school board hearing do not reflect that the school board determined that the interests of the school demand the pupil's expulsion.¹

The minutes of the school board hearing of May 14, 2014, state the board accepted the recommendation of the administration that included, among other things, the "permanent expulsion" from the school district.² The Findings of Fact/Board Conclusions and Order for Expulsion say nothing about a permanent expulsion. Instead, order states the pupil is expelled "for the remainder of the 2013-2014 school year and the first semester of the 2014-2015 school year, with the opportunity for re-enrollment as early as the second semester of the 2014-2015 school year" if the student met certain conditions.

The school district states it separately mailed the order for expulsion containing the findings of fact and conclusions of law of the school board to the pupil's parents.³ The letter of transmittal accompanying the order was dated May 20, 2014. There is no evidence in the record that the school district mailed the order for expulsion to the pupil. The order stated the pupil was expelled through the remainder of the 2013-2014 school year and the first semester of 2014-2015, "with the opportunity for re-enrollment as early as the commencement of the second semester of the 2014-2015 school year" if the pupil met certain conditions.

Minutes of the school board expulsion hearing, and an audio recording of the expulsion hearing are part of the record.

DISCUSSION

¹ The recommendations of the school district administration do not contain recommendations that the school board determine that the pupil engaged in the alleged conduct or that the interest of the school demanded the pupil's expulsion. Since the Expulsion Order does contain these findings, I do not find the lack of determinations in the hearing minutes to be reversible error. However, I do suggest the better practice is to have the hearing minutes reflect all determinations required by statute for an expulsion.

² The part of the record entitled "Recommendation for Expulsion" does state the administration was recommending a permanent expulsion.

³ The July 30, 2014 letter from the school district to the department transmitting the record indicated that the school district mailed the Expulsion Order to both parents. However, the record only contains a copy of the letter enclosing the Expulsion Order that was sent to the pupil's mother. The record does not contain a copy of the letter enclosing the Expulsion Order sent to the pupil's father. The law requires that the Expulsion Order be sent to both parents. The state superintendent does not know how to resolve the contradiction between the July 30, 2014 letter and the record that was enclosed with that letter. However, given this Decision and Order, the state superintendent need not resolve this contradiction.

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, 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 interests of the school district demand the pupil's expulsion. Madison Metropolitan School District v. Wis. D.P.J., 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The appeal letter in this case raises a number of concerns regarding the pupils' history, the alleged reasons she engaged in the conduct for which expulsion is sought, the fact that other students were treated less harshly, and her opinion that expulsion is a disservice to her daughter and other pupils in Wisconsin. Finally, the appellant asserts the pupil was expelled because "it was pre-determined that the board would rule for expulsion." However, appellant sums up her concerns by stating, "... I only want this appealed so that [the pupil] can attend public school in Monomonee Falls where we live and where nobody knows of this and she can put all this nonsense behind her, learn from her mistakes and move on in her life."

In reviewing an expulsion appeal, the state superintendent must ensure that the school board was fair and impartial. T.J. by the Wittenberg-Birnamwood School Dist., (717) May 21, 2014. There is a presumption that public officials, including school board members, will discharge their duties fairly, impartially, and in good faith. K.W. by the Racine Unified School Dist., (705) July 30, 2013, *citing* Heine v. Chiropractic Examining Board, 167 Wis.2d 187 (Ct. App., 1992). There is insufficient evidence in the record to overcome the presumption. Rather, it appears that the school board discharged its duties fairly, impartially, and in good faith.

The other concerns appellant raises are not relevant to this appeal. As a general rule, and one that applies in this case, I do not have the authority to address issues of fairness and unevenness of disciplinary measures. *See e.g. A.B. by the Milwaukee School Dist. (453) February 1, 2002 and R.H. by the Blair School Dist. (159) September 26, 1998.* Moreover, since every pupil's situation is different, the disciplinary treatment of one pupil is not relevant to my review. *See e.g. B.M. by the Marshall School Dist. (608) January 31, 2008 and A.P. by the Sturgeon Bay School Dist. (341), December 17, 1997.* Moreover, I do not believe it is proper for me to second-guess the appropriateness of a school board's determination to expel absent an extraordinary circumstance or a violation of procedural requirements. *See A.D. by the Silver Lake Jt. School Dist. (665) June 28, 2010.*

I do not find an extraordinary circumstance in this case, but I do find multiple violations of procedural requirements. Wis. Stat. § 120.13(1)(c)4.c. provides that the notice of expulsion hearing state the hearing may result in the expulsion of the pupil. The purpose of any legal notice is to advise the person(s) to whom the notice is addressed what they are alleged to have done and what consequences might ensue if the allegations are found to be true. In this case, the school district advised the pupil and her parents that the purpose of the hearing was to determine whether the pupil should be expelled. This purpose accords with the requirement of Wis. Stat. § 120.13(1)(c)4.c. However, the school district further stated that the school board might determine that some other penalty should be imposed. The letter is silent on what another penalty might be.

Although the statute regarding expulsion does not authorize a school board to impose any penalty other than expulsion, the Notice of Expulsion Hearing in this case holds out the possibility that the school board might penalize the pupil by doing something other than expelling her. Because of this language in the Notice, the school district did not properly advise the pupil or her parents of the possible consequences of a determination that the allegations against her were true. Failure to provide notice properly and adequately is a violation of the school district's obligation to follow the required procedures.

The Notice also states that J. [REDACTED] was entitled to be represented by counsel at the hearing. However, the Notice does not state that either or both of her parents could also be represented by counsel at the hearing. Wisconsin Statute § 120.13(1)(c)4.e. requires the Notice to state that the pupil and the pupil's parents are entitled to be represented by counsel at the hearing. The right to be represented by an attorney is an important component of procedural due process and the statute protects this right by requiring that the Notice advise the pupil and the parents of the right to legal representation. The school district violated this procedural requirement.

The law also requires the school district to mail a copy of the expulsion order to each parent and to the pupil. Wis. Stat. § 120.13(1)(c)4.g. There is no evidence in the record that the school district mailed a copy of the expulsion order to the pupil. This, too, is a procedural requirement the school district violated.

I also find that the Order of Expulsion does not clearly advise the pupil and her parents of the nature of the pupil's expulsion. As discussed previously, the order states the pupil is expelled for the balance of the 2013-2014 school year and the first semester of the 2014-2015 school year. This means that after the end of the first semester of the 2014-2015 school year, the pupil has the absolute right to re-enroll in the school district without any conditions as long as she remains a resident of the West Bend School District. Despite this fact, the order goes on to state that the pupil may re-enroll as early as the beginning of the second semester of the 2014-2015 school year if she meets certain conditions. The school board does not have the authority to put conditions on enrollment after the conclusion of the expulsion term. Ben J. by the New Glarus School Dist. (504) December 19, 2003.

When viewed independently, some of the procedural violations might constitute harmless error. However, when viewed together, the violations demonstrate the school district's failure to know the law's requirements, to comply with the law's requirements, or both.⁴

⁴ Since I am overturning the expulsion order for procedural violations, the school district may start the expulsion process over to correct the errors I have found to exist in the expulsion proceeding before me.

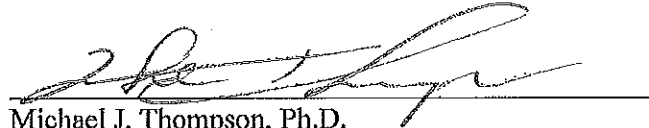
CONCLUSION OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board Decision and Order failed to comply with the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of J [REDACTED] H [REDACTED] by the West Bend School District Board of Education is overturned.

Dated this 18th day of August 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.

Parties to this appeal are:

[REDACTED]

[REDACTED]