

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>S ■ R ■</p> <p>by Chippewa Falls Area Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 14-EX-10</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 Chippewa Falls Area Unified School District Board of Education to expel the above-named pupil from the Chippewa Falls Area Unified School District. This appeal was filed by the pupil's attorney and received by the Department of Public Instruction on December 26, 2014.

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

On November 3, 2014, the pupil, a seventh grade student at Chippewa Falls Middle School, brought a multi-tool to school. The pupil showed the multi-tool's knife to two friends and indicated that he would use the knife as a "shank." By the end of the school day, the school administration became aware of the incident. When interviewed by the middle school principal, one of the two friends indicated that he could imagine the pupil "shanking" someone. The other friend stated that he was "afraid for safety in general."

On November 5, 2014, the school district began the expulsion process by mailing a "Notice of Expulsion Hearing." The letter advised that a hearing would be held on November 13, 2014, that could result in the pupil's expulsion from the Chippewa Falls Area Unified School District through 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 specifically alleged that the pupil brought a knife to school, showed it to other students, and talked about using it as a "shank."

The hearing was held in closed session on November 13, 2014. 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 school 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 school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 21, 2014, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2015-16 school year. The order also provided that the pupil may be granted conditional early reinstatement by the beginning of the 2015-16 school year if he met a variety of conditions, including completing community service, participating in counseling, and successfully completing core academic courses. Minutes of the school board expulsion hearing, the evidence submitted during the hearing, and an audio recording of the proceeding 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 interests of the school district demand the pupil's expulsion.

The appellant alleges that the school district failed to comply with the requirements of the federal Individuals with Disabilities in Education Act (“IDEA”). Under the IDEA, a child with a disability is afforded certain procedural protections prior to an expulsion proceeding. *See* 34 C.F.R. §§ 300.530 – 300.537. The IDEA also affords protections to a student not yet determined to be a child with a disability. 34 C.F.R. § 300.534. Specifically, if a school district had knowledge that a student is a child with a disability before the expellable offense occurred, the

student may assert the procedural protections of the IDEA. 34 C.F.R. § 300.534(a). A school district is deemed to have such knowledge if any of the following apply: (1) the student's parent expressed concern in writing to the student's teacher, the school's administrative personnel, or the school's supervisory personnel that the student is in need of special education or related services; (2) the student's parent requested an evaluation of the student; or (3) the student's teacher or other district personnel expressed concern to the director of special education or other appropriate school personnel about the pattern of behavior demonstrated by the student. *Id.* If a school district lacks such knowledge, it may discipline the student the same way it would discipline a child without a disability. 34 C.F.R. § 300.534(d).

The appellant argues that the school district did have knowledge that the pupil is a child with a disability before the knife incident occurred and, as a result, the pupil should have been afforded the protections of IDEA. Because these protections were not afforded, the appellant urges the state superintendent to overturn the expulsion. I decline to do so.

With limited exceptions, an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular student. R.M. by the Oak Creek-Franklin Joint School District, (711) January 30, 2014. Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. Robert M. by the Arcadia School District, (353), April 6, 1998. Here, there is no evidence in the record that the pupil was identified as a child with a disability. As such, the expulsion order must be affirmed.

Despite the clear precedent set by prior expulsion decisions, the appellant argues that the expulsion order should still be overturned because there *should have* been evidence in the record that the pupil was identified as a child with a disability. Specifically, the appellant argues that,

pursuant to 34 C.F.R. § 300.354, the district had knowledge that the pupil was a child with a disability. As support, the appellant submitted new evidence for me to review. The argument fails for several reasons.

First, the appellant should have presented this evidence to the school board. During the expulsion hearing, the appellant had the opportunity to present evidence regarding the school district's knowledge of the pupil's disability status. New evidence may not be submitted for the first time on appeal. A.B. by the Milwaukee Public School Dist. (657) March 4, 2010. Therefore, I will not consider the appellant's new evidence.

Second, assuming, *arguendo*, that I did consider this evidence, it does not appear that it shows the school district had knowledge that the pupil was a child with a disability. The appellant submitted affidavits which allege that the pupil's teacher "requested" the pupil's mother to have the pupil evaluated. Even if this allegation is true, the school district still would not have had knowledge that the pupil was a child with a disability because such a scenario does not meet any of the criteria of 34 C.F.R. § 300.534(b).

Third, the appellant's argument is still focused on whether the school district complied with the IDEA. As stated above, such arguments are generally beyond the scope of an expulsion appeal. The appellant may pursue these arguments under the specific procedures available under Subchapter V of Wis. Stat. Ch. 115.

Finally, the record contains evidence directly contradicting the appellant's argument. The school district introduced a document at the expulsion hearing entitled "Basis of Knowledge of Disability." In the document, the school's district's director of special education stated that the school district "never received a referral for special education at [anytime] ... nor has this student ever received special education services" and, as a result, the school district "did not

have knowledge that [the pupil] is a child with a disability prior to taking disciplinary measures.” Arguments about the credibility and sufficiency of this evidence are beyond the scope of my review. Jeremy B. by the Waukesha School Dist., (395) August 16, 1999.

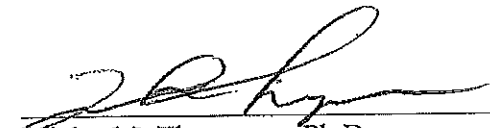
CONCLUSIONS OF LAW

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). I also conclude that the appellant’s arguments are outside my scope of review.

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Chippewa Falls Area Unified School District Board of Education is affirmed.

Dated this 25th day of February 2015



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