

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J [REDACTED] L [REDACTED]

by Hortonville Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-01

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 Hortonville Area School District School District Board of Education (school board) to expel the above-named pupil from the Adams-Friendship Area School District. The pupil's father (appellant) filed this appeal. The Department of Public Instruction received the appeal on February 4, 2015.

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 school board followed the required statutory procedures, 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 December 17, 2014 from the district administrator of the Adams-Friendship Area School District. The letter advised that a hearing would be held on January 5, 2015 that could result in the pupil’s expulsion from the Adams-Friendship Area School District until the pupil’s 21st birthday.

The school district separately sent the letter to the pupil and his father by regular and certified mail. The pupil and his father separately acknowledged receipt of the letter on December 18, 2015. 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 violated the Student Handbook and also violated the Board policy that incorporates the Student Handbook rules and regulations as Board policy. The letter specifically alleged that on December 10, 2014, the pupil possessed a controlled substance, to-wit: marijuana, and attempted to sell drug paraphernalia, to-wit: a marijuana pipe that contained marijuana residue to another pupil. This conduct occurred on school grounds.

The hearing was held in closed session on January 5, 2015. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. During his testimony, the pupil admitted he engaged in the alleged conduct.

After the hearing, the school board deliberated in closed session to consider the recommendation of the school district administration. In brief, that recommendation was that the

pupil be expelled until his 21st birthday with the ability to return to school for the 2015 summer session and the 2015-2016 academic first semester provided the pupil met certain conditions.

The record of proceedings provided by the school district administration for this appeal do not contain any minutes of proceedings held in closed session or any motions made or votes taken by the school board in closed session.

The school board issued Findings of Fact, Conclusions of Law and Order dated January 12, 2015. The Findings of Fact, Conclusions of Law and Order were signed by the school board president and clerk. The Findings of Fact, Conclusions of Law and Order preliminarily state that an “appropriate” motion was made in closed session by an unnamed school board member, and that a roll call vote was taken with all school board members voting Aye.”

The Findings of Fact, Conclusions of Law and Order adopt the recommendations of the school district recommendation and expel the pupil until the end of the 2014-2015 school year with the offer of conditional reenrollment beginning at the commencement of the 2014-2015 summer school session upon meeting certain conditions. The conditions were attached to the Findings of Fact, Conclusions of Law and Order.

The school district separately mailed the order for expulsion containing the Findings of Fact, Conclusions of Law and Order of the school board to the pupil and his father by certified mail on January 13, 2014. The return receipts were dated January 14, 2015.

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

The pupil’s father has appealed the expulsion order to the State Superintendent.

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, 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.L., 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The appeal letter in this case raises four issues for consideration, none of which requires reversal of the expulsion. First, the pupil's father (appellant) states that he is a single parent and that expulsion of the pupil means the pupil will be at home, unsupervised for up to 12 hours per day. Presumably, the pupil's father is claiming, as he did at the hearing, that leaving J. [REDACTED] at home alone and unsupervised probably means that the pupil will engage in misconduct that is more serious than possession of a marijuana pipe.

Wis. Stat. § 120.13(1)(c) states in part, The school board may expel a pupil from school whenever it finds . . . (certain specified conduct listed in the . . . and is satisfied that the interest of the school demands expulsion.”(This statute clearly provides that that the school's interest is paramount. It is common for expelled pupils to remain home, unsupervised, for long hours while a single or both parents are at work. It is always true in such a situation that the expelled pupil

might engage in misconduct that is not likely to occur had the pupil been in school. Once again, however, the law makes clear that the interests of the school outweigh the interests of the pupil.

Second, the appellant claims that possession of the marijuana pipe did not pose a threat to anyone. In its Findings of Fact, Conclusions of Law and Order, the school board specifically found that the possession of drug paraphernalia violated Board Policy No. 5530, the school district's drug prevention policy. The school board also explicitly found that this violation could result in expulsion of a pupil via incorporation of school board policies into the Student Handbook. Moreover, the school board explicitly found that the pupil's conduct endangered the health and safety of others while at school. Finally, the school board stated in its Finding of Facts, Conclusions of Law and Order that it weighed the interests of the student, other students, faculty and staff. After weighing these interests, the school board found that the facts demanded expulsion and that expulsion was appropriate.

"A school board's findings will be upheld if any reasonable view of the evidence sustains them." *See Nicole G., by the Ashland School District*, (390) July 1, 1999. The State Superintendent has consistently held that possession of drug paraphernalia on school grounds is sufficient grounds for expulsion. *See Tara V. by the Edgerton School District*, (337) September 22, 1997 and *Muranda P. by the Winneconne School District*, (393) August 2, 1996.

Third, the appellant argues that possession of drug paraphernalia is illegal and the police should have handled the matter. Possession of drug paraphernalia is illegal and district attorneys can file criminal charges if they deem fit. However, there is no law to support the assertion that illegal conduct cannot also serve as the basis for expulsion.

Fourth, the appellant claims the pupil's right to have witnesses testify on his behalf was "infringed upon" because the appellant asked the school counselor to testify, but she did not

appear at the hearing. This pupil's father did not raise this at the expulsion hearing. The State Superintendent has repeatedly held that matters not raised before the school board cannot be raised for the first time on appeal. See B.R. by the Hamilton School District, (555) August 5, 2005 and Tony R. by the Lake Geneva J1 School District, (259) August 11, 1995.


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 complied with the procedural requirements of Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of J [REDACTED] L [REDACTED] by the Hortonville Area School Board of Education is affirmed.

Dated this 31st day of March, 2015


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:



Dr. Heidi A. Schmidt
District Administrator
Hortonville Area School District
246 North Oak Street
Hortonville, WI 54944

