

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of K ■■■ E ■■■ by Monona Grove School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 15-EX-3</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)(e) from the order of the Monona Grove School District Board of Education to expel the above-named pupil from the Monona Grove School District ("School District"). This appeal was filed by the pupil and received by the Department of Public Instruction on March 26, 2015. The student filed a brief with the appeal. The School District did not file a brief.

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)(e). 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 February 6, 2015, from the district administrator of the Monona Grove School District. The letter advised that a hearing would be held on February 17, 2015, that could result in the pupil's expulsion from the Monona Grove School District through until the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter specifically alleged that the pupil repeatedly refused or neglected to obey school rules and listed nine incidents as the basis for the expulsion hearing.

The hearing was held in closed session on February 17, 2015, before an independent hearing examiner. 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 hearing examiner found that the pupil was guilty of repeated refusal or neglect to obey the rules. The hearing examiner further found that the interests of the school demand the pupil's expulsion. The hearing examiner's February 21, 2015, recommended order for expulsion containing the findings of fact and conclusions of law was mailed separately to the pupil and his parents. The order stated the pupil was expelled through through the 2015-2016 school year. The school board approved the hearing examiner's decision and issued the expulsion order on March 11, 2015. Minutes of the school board expulsion review and a transcript of the hearing before the independent hearing examiner 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 appeal letter in this case raises three issues which require consideration. These include that the district failed to provide proper notice to the pupil, the district failed to meet its burden of proof, and the hearing examiner was not independent. These arguments fail to establish the decision of the school board should be overturned.

The first issue raised by the pupil is that the School District failed to provide proper notice to the pupil, thus depriving him of the opportunity to properly present a defense. The requirements for the notice to the pupil are contained in Wis. Stat. §§ 120.13(1)(c)4. and (e)4. The statutes require the notice to state “[t]he specific grounds...and the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” The specific ground listed in the notice is “repeatedly refusing or neglecting to obey school rules.” The notice then goes on to list the nine alleged instances of conduct upon which the expulsion proceeding is based. Therefore, the notice comports with the statutory requirements.¹ The pupil was informed of the grounds for expulsion and the statutes related to it. As such, he had the opportunity to adequately prepare for the hearing.

¹ Right after the listing of conduct supporting expulsion, on page three of the notice it states, “The school’s administration further believes that the interest of the school demands [the pupil’s] expulsion.” This is a finding, not a requirement, but since it does appear in the notice, I’m unclear what the pupil was arguing.

The second allegation is that the School District failed to meet its burden to prove the necessary elements to expel the pupil. This is offered in two parts. First, the pupil claims the district offered no evidence to support the finding that the interest of the school district demanded K■■'s expulsion. The school presented evidence of the pupil's repeated disobedience of school rules. The superintendent testified that the interest of the school demanded the expulsion. While the Board must make such a finding that it is satisfied the interests of the school demand the expulsion, it is given broad discretion in how to determine that finding. See *D.S. by Cedar Grove-Belgium Area School Dist.*, (552) July 11, 2005 (p.6). In this case, the facts establishing the grounds for expulsion are sufficient to demonstrate that it is in the school's interest to expel the pupil.

The pupil goes on to argue that the School District offered no evidence to support the finding that the pupil wore a shirt with a drug reference. I agree that the evidence presented on the matter was insufficient to support such a finding. Specifically, the School District failed to present *any* evidence showing that the shirt contained a drug reference besides mere speculation. However, seven other allegations were proven by the School District. As such, the absence of evidence in the record for this one allegation does not require the state superintendent to reverse the expulsion.

The final allegation of the pupil is that the hearing examiner was not independent because he asked the district superintendent questions to elicit testimony about the finding that the school's interest demanded the pupil's expulsion. It is settled law that due process requires a fair and impartial decision-maker. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). If a decision-maker is not fair or impartial, due process is violated. *Guthrie v. Wisconsin Employment Relations Comm'n*, 111 Wis. 2d 447, 454, N.W.2d 331, 335 (1983). At the same time, the law

presumes that public officials, including hearing examiners, will discharge their duties fairly, impartially, and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962); *Buker v. Labor & Indus. Review Comm'n*, 2002 WI App 216, ¶ 19, 257 Wis. 2d 255, 267. In this case, I find that the pupil's assertion of bias insufficient to overcome this presumption. This was a hearing conducted between two pro se parties. Hearing examiners often ask questions to elicit necessary testimony, especially in pro se cases. As such, there is no evidence of bias.

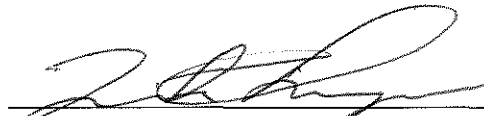
CONCLUSIONS OF LAW

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) and (e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of K ■■■ E ■■■ by the Monona Grove School District Board of Education is affirmed.

Dated this 22nd day of May, 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 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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