

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

C [REDACTED] B [REDACTED]

by Flambeau School District
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-4

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 Flambeau School District Board of Education to expel the above-named pupil from the Flambeau School District. This appeal was filed by the pupil's parent and received by the Department of Public Instruction on May 12, 2015.

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.

FINDINGS OF FACT

On March 5, 2015, the pupil, a ninth grade student at Flambeau High School, was involved in the purchase and possession of a Vicodin pill, a controlled substance. The pupil purchased the pill from a classmate, A.B., in one of the boy's restrooms located in the Flambeau school complex. Another classmate reported to a teacher that she saw the pupil with a large white tablet matching the description of a Vicodin pill. The teacher passed that information to the high school principal. The principal confronted A.B., who admitted selling a tablet to the pupil

for the sum of one dollar. The pupil eventually admitted that he knew of A.B.'s possession of Vicodin, but the pupil denied he either purchased, or otherwise took possession of, any of the Vicodin tablets.¹

The pupil is a student with a disability. On March 9, 2015, the school district held a manifestation determination meeting. At the meeting, it was determined that the pupil's conduct was not a manifestation of his disability.

On March 11, 2015, the school district began the expulsion process by mailing a "Notice of Expulsion Hearing." The letter advised that a hearing would be held on March 16, 2015, that could result in the pupil's expulsion from the Flambeau 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 purchased a Vicodin pill from a classmate in the boy's bathroom on March 5, 2015.

The hearing was held in closed session on March 16, 2015. 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

¹ The school board found that the pupil's denial could not be credited given the unlikelihood that someone in A.B.'s position would incriminate himself merely to cause the pupil harm.

found that the interests of the school demand the student's expulsion. The order for expulsion containing the school board's findings of fact and conclusions of law, dated March 16, 2015, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through his 21st birthday. 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 appeal letter in this case raises three issues which require consideration. First, the appellant alleges that the expulsion hearing notice was not proper because it was untimely and failed to include the particulars of the alleged conduct. In order to be timely, an expulsion notice must be sent not less than five days before the hearing. Wis. Stat. § 120.13(1)(c)(4). "Sent" is not the same as received. *D.S. by the Merrill Area School Dist.*, (682) May 16, 2011. These five days may include weekends and holidays. *M.R.H. by the Clinton Community School Dist.*, (222) March 10, 1994. In this case, the notice was sent five days before the hearing. Therefore, the notice was timely.

Additionally, proper notice must state the particulars of the conduct, including when the misconduct occurred, where the misconduct occurred, and a description of the misconduct to be

considered. *L.W. by the Iowa-Grant School Dist.*, (720) August 19, 2014. The school district's notice clearly informed the pupil of the misconduct that occurred (i.e., purchasing Vicodin), when it occurred (i.e., March 5, 2015), and where it occurred (i.e., in the school's boys restroom).

Second, the appellant asserts that the school board failed to consider the statements made by the school psychologist during the manifestation determination meeting, in violation of due process. The school psychologist did not attend the expulsion hearing. However, the pupil and both his parents did attend. The school board provided them with an opportunity to testify and present evidence, which they did. They also had the opportunity to call witnesses. As such, I find that the pupil's due process right to be heard was not violated. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014.

Third, the appellant also raises questions about the adequacy of the behavioral reports, comments made during the manifestation determination meeting, and adequacy of the alternative educational setting for the pupil. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of an expulsion appeal under Wis. Stat. §120.13(1)(c). *R.H. by the St. Francis School Dist.*, (676) January 21, 2007. That is the case with the questions raised by the appellant. Instead, these questions may be addressed using alternative appeal procedures.²

² If a parent disagrees with a manifestation determination, he or she may request a hearing or file a special education complaint with the department. See 34 C.F.R. §§300.532(a) and 300.506. The department's special education complaint procedures are available at: http://sped.dpi.wi.gov/sped_complain.


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).

ORDER

IT IS THEREFORE ORDERED that the expulsion of C [REDACTED] B [REDACTED] by the Flambeau School District Board of Education is affirmed.

Dated this 30th day of June, 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:



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