

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

C [REDACTED] S [REDACTED]

by the Edgerton School District Board of
Education

DECISION AND ORDER

Appeal No.: 15-EX-8

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 Edgerton School District Board of Education to expel the above-named pupil from the Edgerton School District. This appeal was filed by the pupil's mother, [REDACTED] and received by the Department of Public Instruction on August 24, 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. 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 May 8, 2015, the pupil, a high school student at Edgerton High School, was under the influence of drugs during the school day while on the Edgerton High School property. During the expulsion hearing, the pupil admitted that he was “just barely high” and that he had been in a marijuana “hot box”. He also stated, “In technical terms or legal terms, yes, I did have traces of THC, which resulted in, yes, it was in my system. So yes, you know, I was feeling it.” In addition, school district staff testified that the pupil had slurred speech, an unnatural gait, dilated pupils, incoherent explanations, and unnatural pitch and cadence of voice.

On May 15, 2015, the school district began the expulsion process by mailing a “Notice of Pupil Expulsion Hearing (Notice).” The Notice advised that a hearing would be held on June 1, 2015, that could result in the pupil’s expulsion from the Edgerton School District through the pupil’s 21st birthday. The Notice was sent separately to the pupil and his parents by certified mail to the last known address.¹ 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 was under the influence of drugs on school grounds.

The hearing was held in closed session on June 1, 2015. The pupil and his father, [REDACTED] [REDACTED] 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.

¹ [REDACTED] was incarcerated at the time the Notice was sent, but the School District did not have an address that reflected her incarceration and sent it to her last known address.

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, dated June 3, 2015, contained the findings of fact and conclusions of law of the school board, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the beginning of the 2018-2019 school year. The order also provided that the pupil may be granted conditional early reinstatement at the beginning of the second semester of the 2016-2017 school year if he met a variety of conditions, including undergoing an Alcohol and Other Drug Assessment and successfully complying with all requirements, undergoing random urinalysis, making appropriate progress through the curriculum as determined by his IEP² team, not violating any school rules or policies, and not again engaging in conduct similar in nature. A transcript of the school board expulsion hearing is 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.

² The pupil is a student with disabilities. The pupil's IEP team conducted a manifestation hearing and determined that the pupil's conduct was not a manifestation of his disability.

There are several arguments raised by [REDACTED] that require consideration. [REDACTED] stated in his brief that he was under the impression that he did not need any legal representation and, if he had known he could have legal representation, he would have provided the pupil with an attorney. [REDACTED] states in her brief that the pupil did not have an attorney. The Notice sent to the pupil and his parent specifically states that the pupil and parents or guardian each may be represented by an attorney at the expulsion hearing. That notification is sufficient to meet the requirements of law.

[REDACTED] also argues in her brief that the allegations against the pupil were not proven. The pupil argues parts of what happened were left out, but it is not clear what the pupil claims was left out. The state superintendent has repeatedly held that arguments related to the sufficiency of the evidence are generally beyond the state superintendent's scope of review. The state superintendent has also held that a school board's findings will be upheld if any reasonable review of the evidence sustains them. *Tara P. v. Slinger School District Board of Education*, Decision and Order No. 565 (February 10, 2006); *Blaine R. v. Hamilton School District Board of Education*, Decision and Order No. 555 (August 5, 2005); *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996); and *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997). The matters testified to by the district's witnesses along with the pupil's own testimony provide ample support for the board's findings.

It might be that the pupil and his mother are also saying that the allegations that the pupil's conduct did not endanger the property, safety or health of others. Assuming, for purposes of argument, that the pupil and his mother are making this challenge, it fails. As stated

previously, the state superintendent will uphold an expulsion decision if any reasonable review of the evidence sustains the school board's finding.

The state superintendent has upheld expulsions based upon a pupil being under the influence of drugs, including marijuana on school grounds. *David N. v. Milton School District*, Decision and Order No. 475 (July 26, 2002) and *Alexander T. vs. Oregon School District Board of Education*, Decision and Order No. 545 (May 27, 2005). In addition, the pupil's principal testified that being under the influence of a drug was a danger to the public health and safety and welfare of the student body. He testified that being under the influence of a drug posed a number of threats such as: leaving the building if there is a fire or the building was under lockdown; incoherent thought processes; inability to formulate sentences; engaged in curricula where the class used machinery. A reasonable review of this evidence sustains the school board's finding that the pupil's conduct endangered the health and safety of the student body.

The pupil and [REDACTED] also allege in their briefs that the pupil was under duress when he made certain statements, although it is not entirely clear when the alleged duress occurred and what statements the pupil allegedly made under duress. Even if these allegations were more specific, the state superintendent will not consider them because they were not submitted to the school board at the expulsion hearing. *Matthew C.M. v. Cedarburg School District*, Decision and Order No. 274, (February 14, 2006). The pupil's father also alleges that one of the school district's witnesses was biased. This argument fails for the same reason.

Finally, [REDACTED] argues that expulsion in this case is not good public policy. The school district's policies are irrelevant to an expulsion determination and the state superintendent is not authorized to review, approve or disapprove of school district policies. *Curtis O. v. St. Croix Central School District*, Decision and Order No. 489 (April 17, 2003).


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 requirements of Wis. Stat. §120.13(1)(c). I also conclude that some of the appellant's arguments are outside my scope of review.

ORDER

IT IS THEREFORE ORDERED that the expulsion of C [REDACTED] S [REDACTED] v. Edgerton School District Board of Education is affirmed.

Dated this 7th day of October, 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:

[REDACTED]

Matthew T. Roethe
Roethe Pope Roethe LLP
24 N. Henry Street
PO Box 151
Edgerton, WI 53534

COPIES MAILED TO:



Matthew T. Roethe
Roethe Pope Roethe LLP
24 N. Henry Street
PO Box 151
Edgerton, WI 53534

