

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>K [REDACTED] F [REDACTED]</p> <p>by Westfield School District School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 16-EX-01</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 Westfield School District Board of Education to expel the above-named pupil from the Westfield School District (District). This appeal was filed by the pupil and received by the Department of Public Instruction on February 1, 2016.

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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated December 4, 2015, from the district administrator of the District. The letter advised that a hearing would be held on December 14, 2015, that could result in the pupil's expulsion from the District. 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, on December 1, 2015,

the pupil used profane language to Basketball Coach Duley and Basketball Coach Janke and threatened bodily harm to Coach Duley in the locker room hallway of Westfield Area High School.

The hearing was held in closed session on December 14, 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 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 December 14, 2015, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through through July 25, 2020. Minutes of the school board expulsion hearing 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 interest of the school district demand the pupil's expulsion.

The appeal letter in this case raises several issues which require consideration. First, the pupil alleges the Westfield School District ("District") failed to make adequate information

available to the pupil and the pupil's parents about the hearing which denied them a fair opportunity to prepare their case. Similarly, the pupil alleges that the District failed to provide, in a reasonably timely manner prior to hearing, the witness statements, video/audio recordings and other relevant material. The crux of the pupil's argument is that the pupil's mother had requested "any video, audio or witness statements pertaining to this incident" prior to the hearing and she was not provided any evidence until moments before the hearing. Although the District's notice of December 4, 2015, stated that the pupil "may present evidence, cross examine witnesses, and review and obtain copies of evidentiary materials," this is not a statutory requirement. From the record, it is clear the pupil was given the right to present evidence, cross examine the witnesses, and obtain copies of the evidentiary materials at the hearing. According to the record, all present were given time to review the materials. The actions of the District comport with, and even exceed, statutory requirements. Although the state superintendent has previously held an expulsion may be overturned as a violation of due process if a district fails to follow its own procedures, I find no evidence that they failed to follow their own procedures. R.D.by the Crandon School Dist., (138) May 21, 1986; B.T. by the East Troy Community School Dist., (713) January 31, 2014.

The pupil further asserts that he was denied access to a video recording of the alleged incident which may have substantiated the pupil's version of events. This video was not used at hearing and is therefore outside the scope of this review. Even if this issue had been raised at hearing or was within the scope of this appeal, the probative value of the video would appear to be very limited as the video recording did not contain audio. As such, the video would not have demonstrated whether the pupil uttered a threat to the coach or not.

The next issue raised by the pupil is that the only testimony presented to the board was that of Principal David Moody. The District did not call any witnesses to the actual altercation. The state superintendent has repeatedly found that a school board is permitted to consider and base its

decision upon the testimony of a school administrator who relates the results of his or her investigation, including statements of other people, when there are factors establishing the reliability and probative value of such testimony. B.S. by the Marshall School Dist., (626) July 11, 2008.

The final issue the pupil asserts justifies a reversal of the expulsion is that the Board's decision is not reasonably justified by the evidence. The expulsion statute states that a school board may expel a pupil from school whenever it finds that the pupil "engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others ... and is satisfied that the interest of the school demands the pupil's expulsion." Wis. Stat. § 120.13(1)(c). A school board's findings will be upheld if any reasonable view of the evidence sustains them. N.P. by the Wisconsin Dells School Dist., (719) June 23, 2014. The pupil has admitted to making the statements, although he states they were made in a rant as he left the area. It is clear the conduct in question occurred while the pupil was on school premises. While another district may have been more lenient under the circumstances, the student's statement is a threat even if muttered while walking away. The District reasonably found that the conduct alleged was a threat which endangered the coach. The Board was in the best position to evaluate the evidence and come to a conclusion. Although the punishment may seem excessive, since the authority to "approve, reverse, or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period. A.M. by the West Allis-West Milwaukee School Dist., (703) February 18, 2013.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.


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).

ORDER

IT IS THEREFORE ORDERED that the expulsion of K [REDACTED] F [REDACTED] by the Westfield School District School District Board of Education is affirmed.

Dated this 1st day of April, 2016


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:

K [REDACTED] P [REDACTED]

[REDACTED]

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