

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of A [REDACTED] J [REDACTED] by Oconto Falls School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 16-EX-03</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 Oconto Falls School District Board of Education to expel the above-named pupil from the Oconto Falls School District. This appeal was filed by the pupil's mother ("appellant") and received by the Department of Public Instruction on April 25, 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). 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 pupil be expelled.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated March 18, 2016, from the district administrator of the Oconto Falls School District. The letter advised that a hearing would be held on March 29, 2016, that could result in the pupil's expulsion from the school district through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents by

certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authorities, which endangered the property, health, or safety of others. The letter specifically alleged that:

1. On or about December 8, 2015, the pupil left school grounds during the school day without permission and, while gone, used marijuana and alcohol. The student then returned to the school under the influence of alcohol and marijuana. The pupil agreed to a disciplinary agreement in lieu of expulsion for this conduct.
2. On or about March 11, 2016, the pupil was in possession of marijuana on school premises, thus violating the disciplinary agreement.

The hearing was held in closed session on March 29, 2016. The pupil and her parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 found that the interests of the school demanded the pupil's expulsion.

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, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent must ensure that the required statutory procedures were followed, that the state 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 Metro. Sch. Dist. v. Wis. D.P.L., 199 Wis. 2d 1, 543 N.W.2d 843 (1995).

The appellant raises three issues which require consideration. First, the appellant alleges that she was coerced into signing a disciplinary agreement following the incident on December 8, 2015. Specifically, the appellant claims that the pupil was threatened with expulsion proceedings if the pupil and her parents did not sign the agreement. Nothing in the record supports this allegation. The school board could have expelled the pupil after the December 8, 2015 incident. Instead, the school administration informed the pupil and her parents of the possible consequences of the pupil's conduct (i.e., expulsion) and offered her an alternative. The pupil and her parents were free to turn down the offer. Instead, they chose to avoid the risk of an expulsion hearing by signing the agreement. Having benefited from the agreement, the appellant cannot now claim that the agreement is invalid. Further, the pupil's conduct on March 11, 2016, alone provides sufficient grounds to expel the pupil, regardless of the agreement. Therefore, no reversible error occurred.

Second, the appellant argues that the conduct did not occur as stated and that there is testimony that conflicts with the school board's findings. Specifically, the pupil's parents argue that the pupil did not violate the disciplinary agreement because the student denied ingesting the marijuana and passed a drug test. The state superintendent has held that a school board's findings will be upheld if any reasonable review of the evidence sustains them. T.P. by the Slinger Sch. Dist., (565) February 10, 2006; B.R. by the Hamilton Sch. Dist., (555) August 5, 2005. There is ample evidence in the record to support the school board's findings. The terms of the disciplinary agreement state that the pupil must "refrain from any involvement with alcohol and/or controlled substances, to include being present at any location where the unlawful consumption of alcohol

and/or controlled substances is occurring.” Multiple witness statements support the Board’s conclusion that the pupil possessed marijuana on March 11, 2016. For example, one witness stated that she had given the marijuana to Student A while the pupil was present. Similarly, two witnesses saw the pupil and Student A in a bathroom stall together and smelled marijuana. Given these facts, the board’s decision is supported by a reasonable view of the evidence.

Finally, the appellant claims that the order of expulsion is counterproductive and would hinder the pupil’s education. The expulsion statute gives the superintendent the power to modify a school board’s expulsion decision. Wis. Stat. § 120.13(c)(3) (“ . . . the state superintendent shall review the [school board’s] decision and shall, upon review, approve, reverse, or modify the decision.”) However, I do not believe it is proper for me to second-guess the appropriateness of a school board’s determination to expel absent an extraordinary circumstance or a violation of procedural requirements. *See A.D. by the Silver Lake Jt. Sch. Dist.*, (665) June 28, 2010. Here, no such circumstances exist. After the December 8, 2015 incident, the school administration provided the pupil with a second chance. Just over three months later, the pupil again engaged in conduct warranting 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 requirements of Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of A [REDACTED] J [REDACTED] by the Oconto Falls School District Board of Education is affirmed.

Dated this 23 day of June, 2016

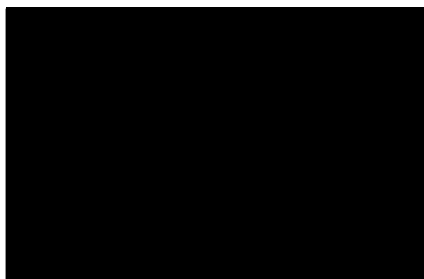

Carolyn Stanford Taylor

Assistant State Superintendent of Public Instruction

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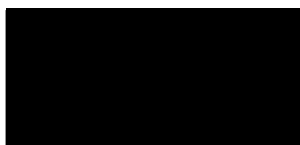
Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the services provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

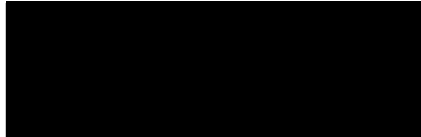
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