Decision and Order No.: 742

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of R[redacted] B[redacted] by Black River Falls School District Board of Education	DECISION AND ORDER Appeal No.: 16-EX-09

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 Black River Falls School District Board of Education to expel the above-named pupil from the Black River Falls School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on July 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).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated and sent on May 17, 2016, from the district administrator of the Black River Falls School District. The letter advised that a hearing would be held on May 24, 2016 that could result in the pupil's expulsion from the Black River Falls School District through pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. Quoting Wis. Stat. § 120.13(1)(c)1, the letter alleged

that the pupil "knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives." The letter specifically alleged: "On the evening of May 9, 2016, [the pupil] sent snapchat messages to at least two BRF high school students that included the words, 'Making a bomb for school on Thursday.'"

The hearing was held in closed session on May 24, 2016. 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 "knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives." The school board further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated May 27, 2016, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through January 20, 2017. The order also stated that the pupil may be permitted early readmission if the pupil complied with a variety of conditions. Minutes of the school board expulsion hearing and a transcript of the 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 appellant raises a litany of arguments as to why the expulsion should be overturned. For the reasons explained below, these arguments fail either as a matter of law or fact or both. First, the appellant argues that the high school principal violated the pupil's due process rights during the two suspensions that proceeded the expulsion.[1] Alleged violations of the suspension statute are outside the scope of the state superintendent's review. *Madison Metro. Sch. Dist. v. Wisconsin Dep't of Pub. Instruction*, 199 Wis. 2d 1, 13, 543 N.W.2d 843, 848 (Ct. App. 1995). Therefore, even if the allegations are true, they do not provide a basis to overturn the pupil's expulsion.

Second, the appellant argues that the pupil's due process rights were violated because the appellant was not allowed the opportunity to subpoena more than a dozen witnesses. However, nothing in the record, including the transcript, supports this allegation. At no point during the hearing did the appellant ask to subpoena witnesses.

Third, the appellant argues that the school district's evidence was incomplete because it didn't contain the complete email chains that led to the pupil's first two suspensions. This argument also fails. The school district had no obligation to provide every document related to prior incidents. *See Courtney R. by the Germantown Sch. Dist. Board of Ed.*, (278) March 21, 1996. Also, the appellant raised this issue numerous times before the school board. As such, the school

[1] The pupil made two threatening statements prior to threat he sent by Snapchat on May 9, 2016. Both of the prior incidents led to suspensions. The first incident occurred on March 31, 2016, when the pupil sent a school-wide email with an Internet meme. The caption for the meme stated, "[D]o you want a school shooting because thats [sic] how you get a school shooting." The second incident occurred on May 4, 2016, when the pupil sent yet another school-wide email. The email simply stated, "bomb threat." The pupil was still suspended when he made the May 9, 2016 threat.

board was well aware of any potential discrepancies in the evidence and, as the finder of fact, it could weigh the evidence accordingly.

Fourth, the appellant argues that the school district did not mail the notice in a timely manner. Specifically, the appellant argues that the letter was mailed "after postal service hours," thus delaying the letter by a day. The expulsion statutes requires school districts to provide "not less than 5 days' written notice of the hearing." Wis. Stat. § 121.13(1)(c)4. The notice was postmarked May 17, 2016, seven days before the expulsion hearing. Therefore, the school district provided timely notice.

Fifth, the appellant claims that the school board's attorney violated the pupil's due process rights in a variety of ways. Among other things, the appellant argues that the attorney was not impartial and impermissibly withheld evidence. Nothing in the record supports these accusations. At the very beginning of the hearing, the attorney correctly stated her role in the matter: "I am the attorney for the School Board. My purpose tonight is to help the Board run a hearing that allows the family and the Administration to both have a fair opportunity to present any information you think these Board Members should have before they decide the case tonight." That is exactly what the attorney did. She ensured the hearing was conducted in an orderly manner. She asked a number of clarifying questions when testimony was unclear. She consistently offered the pupil and his family multiple opportunities to submit evidence and ask questions. She prevented both the pupil's family and the school administration from asking impermissible questions. Nothing about this is improper.

Sixth, the appellant argues that the expulsion should be overturned because the high school principal and a school board member allegedly abused their authority. Specifically, the appellant alleges that the high school principal initiated the expulsion proceeding at the behest of a school

board member. The board member allegedly did so at the request of his daughter, a classmate of the pupil. Nothing in the record supports this allegation. Assuming that the appellant is arguing that the school board member was biased, the member in question did not participate in the expulsion proceedings. Assuming, for the sake of argument, that the board member was biased, abstaining from participating in the proceedings was not only proper, it was required. T.J. by Wittenberg-Birnamwood Sch. Dist. (717) May 21, 2014.

Seventh, the appellant alleges that expelling the pupil for a bomb threat violates the pupil's First Amendment rights. Courts have generally found that schools may address a student's communication that occurs online and off-campus if school administrators could reasonably forecast a substantial disruption at school based on the student speech. This includes bomb threats, even if the threat is a misguided attempt at humor. *See e.g.,* R.L. v. Cent. York Sch. Dist., 2016 WL 2342089, at *8 (M.D. Pa. May 3, 2016). Simply put, the First Amendment doesn't allow the pupil to make school bomb threats without facing repercussions.

Eighth, the appellant argues that the pupil did not make a bomb threat because the police did not seek charges against the pupil. This argument is without merit. The school board's power to expel a pupil is based on the expulsion statute. It is irrelevant whether or not the police believe the pupil's conduct also violated the criminal law.

Ninth, the appellant argues that the pupil's conduct did not meet the statutory grounds for expulsion because the pupils' conduct did not endanger anyone at school. The appellant misreads the expulsion statute. One of the statutory grounds for suspension or expulsion is if a student "engaged in conduct while at school which endangered the property, health or safety of others." The school district never relied upon this basis. Instead, both expulsion notice and the order stated that the statutory grounds for expulsion were that the pupil "knowingly conveyed or caused to be

conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy and school property by means of explosives." There is no dispute that the pupil's May 9, 2016 conduct met this statutory ground for expulsion.

Tenth, the appellant argues that the school board's decision was impermissibly based upon the pupil's prior misconduct. Again, this argument is unsupported by the record. The expulsion order specifically stated that the basis for the expulsion was the May 9, 2016 conduct.

Eleventh, the appellant argues that the expulsion order is defective because it was unsigned. This is simply a scrivener's error which requires the school board to issue a signed order. The school board has already done so.

Twelfth, the appellant claims that the expulsion should be overturned because the school board did not postpone the expulsion hearing to allow the appellant time to obtain counsel. Nothing in the record supports this claim. Instead, there is a letter, dated May 23, 2016, from the appellant. In the letter, the appellant requests a postponement because the school district allegedly failed to provide "...ALL and FULL and COMPLETE RECORDS and INFORMATION pertaining to the alleged incident(s)..." (Emphasis original) This is not grounds for reversal. Again, the school district had no obligation to provide every document related to prior incidents. *See Courtney R. by the Germantown Sch. Dist. Board of Ed.*, (278) March 21, 1996.

Finally, the appellant claims that the school district violated the expulsion order by permitting the pupil onto school property without written permission. If true, this also means that the pupil violated the expulsion order. It is unclear why violations of the expulsion order by both parties would result in the original order being overturned. More importantly, the state superintendent's review is limited to reviewing whether the school board complied with the expulsion statute, not whether the terms of the expulsion order were complied with by both parties.

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 and district complied with all of the procedural requirements of Wis. Stat.§ 120.13(1)(c). I further conclude that the pupil's due process rights were not violated.

ORDER

IT IS THEREFORE ORDERED that the expulsion of R[redacted] B[redacted] by the Black River Falls School District Board of Education is affirmed.

Dated this 23rd day of September, 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:

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