

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A [REDACTED] M [REDACTED]</p> <p>by Germantown School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 17-EX-04</p>
---	---

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 Germantown School District Board of Education (Board) to expel the above-named pupil from the Germantown School District (District). This appeal was filed by the pupil's parents and received by the Department of Public Instruction on April 21, 2017.

In accordance with the provisions of Wis. Adm. 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 Pupil Expulsion Hearing," dated February 16, 2017, from the district administrator. The letter advised that a hearing would be held on March 6, 2017, that could result in the pupil's expulsion from the 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 authority which

endangered the property, health, or safety of others. The letter specifically alleged that the pupil had a green, leafy substance testing positive for THC and drug paraphernalia in her car while the car was parked on school property.

The hearing was held in closed session on March 6, 2017. The pupil and her parents appeared at the hearing without counsel. At the hearing, the District's 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 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 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 Board, dated March 9, 2017, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the pupil's 21st birthday. 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 appeal letter and subsequent briefs submitted by the pupil's parents raise several issues which require consideration. First, the pupil's parents argue the Notice of Pupil Expulsion Hearing was deficient. Pursuant to Wis. Stat. § 120.13(c)(4), the mandated notice of expulsion hearing "shall state all of the following:"

...

f. That the school board shall keep written minutes of the hearing.

g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.

h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.

i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.

j. That the decision of the school board shall be enforced while the department reviews the school board's decision.

k. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.

...

The notice requirements of Wis. Stat. § 120.13(c)(4) are mandatory, and a failure to comply with the statute requires reversal of a subsequent expulsion order. *O.S. by the Racine Unified Sch. Dist. Bd. of Ed.*, (548) June 27, 2005; *S.S. by the West Allis Sch. Dist. Bd. of Ed.*, (559) Oct. 7,

2005; *S.P. by the Watertown Sch. Dist. Bd. of Ed.*, (560) December 20, 2005. In this matter, the Notice of Pupil Expulsion Hearing did not include the information required by Wis. Stat. § 120.13(c)(4). There is no dispute that the information required by Wis. Stat. §§ 120.13(c)(4)f. – k. is missing from the District’s Notice of Pupil Expulsion Hearing and so there is no dispute that the Notice fails to meet the mandatory statutory requirements of Wis. Stat. § 120.13(c)(4).

The Board argues that it complied with its statutory obligations because the Board did keep a written record, and the pupil and pupil’s parents were eventually notified of their right to appeal the expulsion decision once the expulsion had been ordered. However, the requirements under Wis. Stat. § 120.13(c)(4) do not describe general obligations that may be satisfied at any point during the expulsion process. Instead, Wis. Stat. § 120.13(c)(4) states in plain, unambiguous terms that a written notice of expulsion hearing must state each of the listed components, including those listed in Wis. Stat. §§ 120.13(c)(4)f. – k. Because the notice failed to comply with the statutory notice requirements, the Board’s decision must be reversed.

While the expulsion decision must be reversed for this reason alone, I will address the appellants’ remaining allegations in the event that the Board recommences expulsion proceedings against the pupil. The appellants’ second argument is that the District failed to abide by its own policies governing sanctions for violating school rules. The state superintendent’s authority to review an expulsion order does include authority to review, approve, or disapprove of school policy, or to police the appropriate application of that policy. Rather, the review authority is to ensure that the pupil had been provided adequate procedural due process. *N.K. by the Marshall Sch. Dist. Bd. of Ed.*, (620) May 15, 2008. Note, however, that if a school board establishes procedural due process guidelines that interpret or exceed the statutory minimum due process requirements under Wis. Stat. § 120.13(1)(c), a violation of these due process guidelines may

constitute a deprivation of a pupil's right to due process. *B.T. by the East Troy Community Sch. Dist. Bd. of Ed.*, (713) January 31, 2014. The appellants do not allege that the District failed to comply with its own procedural due process policies, and so the issue is beyond the scope of this review.

Third, the appellants' argue that the Board erred in determining the pupil had not been identified as a child with a disability prior to the expulsion hearing. 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 Wis. Stat. § 120.13(1)(c). *R.S. by the Barron Area School Dist.*, (417) June 9, 2000. Any challenges to the District's special education evaluation procedures may be addressed using special education appeal procedures.¹

Fourth, the appellants' argue that the Board's expulsion is overly severe relative to the alleged infraction. Unless there are exceptional circumstances, the state superintendent will not review whether an expulsion is excessively harsh. School boards are afforded wide latitude in determining whether an expulsion is an appropriate response to alleged conduct. *T.R. by the Nicolet Sch. Dist. Bd. of Ed.*, (707) December 17, 2013. The Board's expulsion in this matter does not involve exceptional circumstances.

Fifth, the appellants' argue that early reinstatement conditions imposed by the Board were unreasonable. Specifically, the appellants' argue that requiring the pupil to pass a drug test within 72 hours of the expulsion hearing was an impossible condition, in that THC may remain in a person's body long after smoking marijuana. The drug test within 72 hours could therefore result

¹ Information on how to file an IDEA State complaint can be found on the department's website: <https://dpi.wi.gov/sped/dispute-resolution>.

in a failed drug test, even if the failed test was due to marijuana use occurring prior to the alleged conduct leading to the expulsion.

School boards are not required to offer early readmission. If they choose to do so, the conditions must be related to the reason for the expulsion. Wis. Stat. § 120.13(1)(h)2. If a pupil or parent does not agree that the condition relates to the reason for expulsion, the pupil or parent must appeal to the school board within 15 days of the order, and the school board determination is final. However ill-conceived an early condition may be, the state superintendent does not have the authority to review the condition. *Hannah W. by the River Falls Sch. Dist. Bd. of Ed.*, (502) December 12, 2003.

Sixth, the appellants' argue the outcome of the hearing was predetermined. In reviewing an expulsion appeal, the state superintendent must ensure that the school board was fair and impartial. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014. There is a presumption that school board members will discharged their duties fairly, impartially, and in good faith. *K.W. by the Racine Unified School Dist.*, (705) July 30, 2013, citing *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App. 1992). Though members of the school district administration prepared the case against the pupil and expulsion recommendations in advance of the hearing, the administration does not make the ultimate decision whether to expel the pupil. The Board made its decision independently after hearing evidence and arguments presented by the parties. There is insufficient evidence in the record to overcome the presumption that the school board members acted fairly, impartially, and in good faith.

Finally, the appellants' argue that the Board denied the pupil due process because the written expulsion order was delivered on March 10, 2017, one day after one of the pupil's early reinstatement conditions was to have been met. Though Wis. Stat. § 120.13(1)(c)3. requires that a

school board mail a copy of the expulsion order to the pupil and the pupil's parents, there is no prescribed time limit. *BS by the New London Sch. Dist. Bd. of Educ.*, (578) July 27, 2006; *Kyle J. W. by the Viroqua Area Sch. Dis. Bd. of Educ.*, (413) April 27, 2000. The pupil and the pupil's parents had notice of the relevant early reinstatement conditions and attempted to comply with the condition. In this regard, the Board complied with the statute and the pupil was not denied due process.

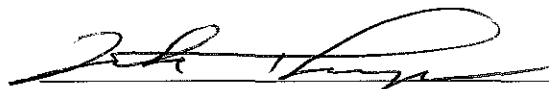
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of A [REDACTED] M [REDACTED] by the Germantown School District Board of Education is overturned.

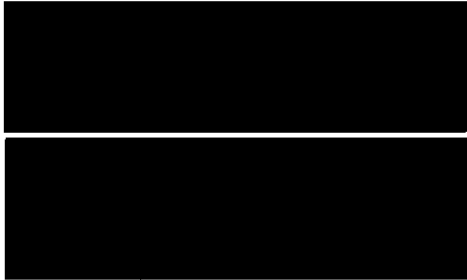
Dated this 19th day of June, 2017


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 Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

PARTIES TO THIS APPEAL ARE:



Jeffrey Holmes
District Administrator
Germantown School District
N104W13840 Donges Bay Rd
Germantown, WI 53022

COPIES MAILED TO:



Mary Hubacher
Buelow Vetter Buikema Olson & Vliet, LLC
20855 Watertown Rd. Ste. 200
Waukesha, WI 53186