

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

M [REDACTED] M [REDACTED]

by Shawano School District
Board of Education

DECISION AND ORDER

Appeal No.: 17-EX-10

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 Shawano School District Board of Education to expel the above-named pupil from the Shawano School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 20, 2017.

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 § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated October 19, 2017, from the district administrator of the Shawano School District. The letter advised that a hearing would be held on October 30, 2017, that could result in the pupil's expulsion from the Shawano School District through pupil's 21st birthday. 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 October 12, 2017, the pupil was in possession of a prescription medication in violation of school policy and in possession of a controlled substance, marijuana, both with the intent to distribute said substances to other students.

The hearing was held on October 30, 2017. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent 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 November 1, 2017, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing, an audiotape of the 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 in this case raises six issues which require consideration. The first issue raised is that neither the pupil nor the parent were provided with the district's investigative report or discipline records prior to the start of the expulsion hearing. It has long been held that there is no requirement that the district provide copies of hearing exhibits before the hearing. *M. J. By Mount Horeb Sch. Dist. Bd. of Educ.*, (710) Jan. 28, 2014; *B.S. by Marshall Sch. Dist. Bd. of Educ.*, (626) July 11, 2008. School districts are strongly encouraged to provide copies of exhibits and evidence prior to an expulsion hearing to allow pupils the ability to best prepare for a hearing. However, failure to provide exhibits and evidence prior to the hearing is not reversible error.

The second issue raised by the pupil's father is that there is a lack of proof that the pupil had the intent to sell his own prescription medication. Evidence of the student's intent is set forth in Mr. Russ's report of October 12, 2017. This report is not entirely clear about the pupil's intent and to what he did or did not admit, and there is room for doubt as to whether or not the administration proved the pupil had intent to sell his prescription medication. Further, according to page three of the minutes of the expulsion hearing, "Mr. Zwirschitz said if he was really distributing it would have been just expulsion until age 21, but he was a go between." As such, it could be inferred that the district admitted that it did not believe that the pupil was distributing. Otherwise, the district would not have recommended allowing conditional reinstatement. Additional evidence has been submitted by the pupil's father as to whether or not the pupil admitted to distributing drugs, however that was not considered at the hearing, so it cannot be considered in an inquiry as to whether or not the board erred in its holding.

Despite this conflicting evidence, it has long been held that the quantum of proof in an expulsion hearing is a preponderance of the credible evidence. *Earl N. by the Milwaukee Sch. Dist. Bd. of Educ.*, (111) March 3, 1983. Mr. Russ testified that the pupil admitted to selling pills. The credibility of the witnesses is best determined by the trier of fact, here the school board. The school board found that Mr. Russ was credible and proved the intent to distribute. *Nikkole K. by the Janesville Sch. Dist.* (238) Sept. 16, 1994, *John N. by the Colfax Sch. Dist.*, (384) June 2, 1999. Absent extraordinary circumstances, it is inappropriate for a state superintendent to second-guess a school board's decision. *A.M. by the Germantown Sch. Dist. Bd. of Ed.* (749) June 19, 2017; *C.T. by the Milwaukee Public Schools* (718) May 22, 2014. Findings will be upheld if any reasonable view of the evidence sustains them. *A.J. by Oconto Falls Sch. Dist. Bd. of Ed.* (738) June 23, 2016; *T.S. by the West Allis-West Milwaukee Sch. Dist. Bd. of Educ.* (684) May 20, 2011; *L.P. by the Whitewater Unified Sch. Dist. Bd. of Educ.* (351) March 31, 1998. The board's findings do not present reversible error.

The third issue raised by the pupil's father is that Mr. Russ's assertion that the pupil takes more than his prescribed amount of pills "to get high" should not have been used as a reason for the expulsion hearing. I see no evidence that this was a basis for the expulsion hearing. Rather, the expulsion hearing considered the possession and distribution of drugs. I could find no evidence that that the pupil's motives for using the prescribed pills was a deciding factor in whether or not to expel the pupil, and is therefore irrelevant for purposes of this review.

Issue number four concerns whether or not the pupil should have had an individualized education program (IEP) in place for his behavioral issues. 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, and so the issue is beyond the scope of this review. Any alleged

violation of applicable special education law should be addressed using appropriate complaint processes.¹

Issue five relates to some misinformation about the pupil's date of birth and whether the student suffered from a disability. The pupil's father has not demonstrated that an incorrect birthdate on the referral cover sheet prejudiced the pupil in any way or affected the outcome of the hearing. As such, it is not reversible error. The establishment of an IEP is addressed in the previous allegation. If a student does not have an IEP in place, the student does not have a disability with respect to the laws governing expulsions. Therefore, even though the father asserts his son has a disability, there is no error.

A final issue brought up in appellant's briefs is the disclosure of another pupil's confidential information.² I again find no evidence that this was considered in the decision of whether to expel the pupil. However, this could constitute a violation of FERPA or Wis. Stat. § 118.125(2) and therefore, the school district is cautioned to be more vigilant with pupil records.

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 did comply with all of the procedural requirements of §120.13(1)(c).

¹ Information regarding these processes can be found at <https://dpi.wi.gov/sped/dispute-resolution/complain>.

² The appeal letter has a sixth issue that is substantially similar to issue two above, so that is not addressed again.

ORDER

IT IS THEREFORE ORDERED that the expulsion of M [REDACTED] M [REDACTED] by the Shawano School District Board of Education is affirmed.

Dated this 24th day of January, 2018



Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

Parties to this appeal are:

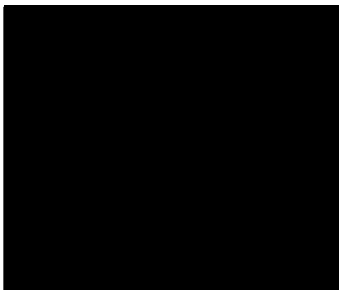


Gary Cumberland
District Administrator
Shawano School District
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APPEAL RIGHTS

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.

COPIES MAILED TO:



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