

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

S ■ L ■

by New Glarus School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-02

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 New Glarus School District Board of Education to expel the above-named pupil from the New Glarus School District. The appeal was filed by the pupil's parents and was received by the Department of Public Instruction on January 24, 2018.

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 12, 2017, from the District Administrator of the New Glarus School District. The letter advised that a hearing would be held on December 13, 2017, that could result in the pupil's expulsion from the New Glarus School District through the pupil's 21st birthday. Upon the request of the pupil and his parents, the hearing was postponed and a second hearing notice was sent on December 27,

2017, which advised that the hearing would be held on January 3, 2018. The letters 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. Specifically, the letters alleged that:

On or about November 10, 2017, [the pupil] placed his hand on a female student's genitalia and/or her breast while the two students were in class. In addition, on or about November 28, 2017, [the pupil] poked, badgered, and/or made harassing comments about a 5th grade student on the sidewalk between the middle school and the elementary school. In addition, on or about November 30, 2017, [the pupil] placed his hands on a female student's buttocks and either squeezed, rubbed, or grabbed her buttocks while the two students were in class.

The hearing was held in closed session on January 3, 2018. The pupil and his parents appeared at the hearing with counsel, Attorney Harlowe. 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 which endangered the health and safety of others at school. 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 January 12, 2018, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through his 21st birthday with the option for conditional early reinstatement for off-campus educational services effective immediately if the pupil satisfied several conditions.

By mutual agreement of the parties, a revised order for expulsion was mailed on January 24, 2018. The revised order included conditional early reinstatement to the New Glarus School District at the start of the first semester of the 2019-20 school years if the pupil satisfies and

completes the conditions for early reinstatement and continues to comply with the conditions following any reinstatement.

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. *M.M. by the Shawano Sch. Dist.*, (755) January 24, 2018.

The appeal letter raises two issues that require consideration. First, the appellant alleges that the school board was biased against the pupil. The appellant specifically alleges two circumstances that created impermissible bias. First, the appellant argues that one of the victims was the daughter of the school board president and although the board president abstained from the hearing, her involvement still impacted the board’s decision. Second, the appellant argues that one of the victims was the daughter of a school employee and that employee had the means to influence the administration.

There is a legal presumption that public officials act fairly, impartially, and in good faith. *K.W. by the Racine Unified Sch. Dist.*, (705) July 30, 2013; *K.W. by the Tri County Area Sch. Bd.* (130) May 10, 1985, citing *State ex rel. Wasilewski v. Bd. of Sch. Dirs.*, 13 Wis. 2d 243, 111 N.W.2d 198 (1961). Absent any evidence in the record to establish the contrary, the presumption must hold. *K.W. by the Tri County Area Sch. Bd.*

In this case, there is no evidence in the record to indicate that the fact that the board president's daughter was an alleged victim caused any bias against the pupil. To the contrary, the board president recused herself from the hearing so as to prevent any bias from influencing the decision of the other board members. Additionally, the school board granted the pupil's attorney's request that the school board leave the room while he presented his motion regarding Charge 2 of the Notice of Expulsion Hearing relating to the board president's daughter. Further, even though the administration denied the motion, the school board ultimately found that only Charges 1 and 3 in the Notice of Expulsion Hearing are true and correct. Finally, with regard to the second allegation of bias, the appellant has not presented any evidence and there is no evidence in the record that the school employee whose daughter was an alleged victim influenced the school board in any way. For the above reasons, I find that the appellant's assertion of bias is insufficient to overcome the legal presumption articulated in *K.W. by the Tri County Area Sch. Bd.*

The appellant also argues that the expulsion order was in error because it omitted the option for conditional reinstatement to the New Glarus School District. The omission of the option for conditional reinstatement appears to be a scrivener's error and was corrected by the board by a revised expulsion order dated January 24, 2018. This error is not a basis to reverse the order.

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 Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of S [REDACTED] L [REDACTED] by the New Glarus School District Board of Education is affirmed.

Dated this 21st day of March, 2018



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

APPEAL RIGHTS

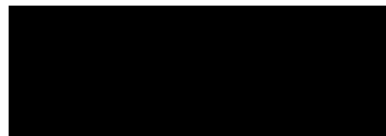
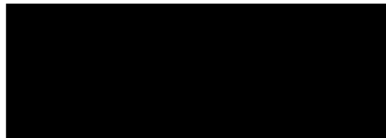
Wis. Stat. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent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

PARTIES TO THIS APPEAL ARE:



Jennifer Thayer
District Administrator
New Glarus School District
1701 2nd St.
New Glarus, WI 53574

COPIES MAILED TO:



Jennifer Thayer
District Administrator
New Glarus School District
1701 2nd St.
New Glarus, WI 53574

Kirk Strang
Strang, Patteson, Renning, Lewis & Lacy, s.c.
660 W. Washington Ave., Ste. 303
Madison, WI 53703