

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 Oak Creek-Franklin Joint School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-04</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 Oak Creek-Franklin Joint School District Board of Education to expel the above-named pupil from the Oak Creek-Franklin Joint School District. The appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on February 14, 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 January 12, 2016, from the Associate Principal of Oak Creek High School. The letter advised that a hearing would be held on January 19, 2016, that could result in the pupil's expulsion from the Oak Creek-Franklin Joint School District through the pupil's 21st birthday. The letter was sent separately to

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 argues that the expulsion violated Wis. Stat. § 120.13(1)(c)4., and the pupil's right to procedural due process guaranteed by the Fourteenth Amendment to the U.S. Constitution and Art. 1, § 1 of the Wisconsin Constitution because the school district failed to send written notice of the expulsion hearing to both the pupil and his parents. There is no evidence to reflect that the pupil received a separate copy of the Notice of Expulsion Hearing. The record indicates that the Notice of Expulsion Hearing was addressed only to the pupil's parents and mailed by certified mail to both parents.

Section 120.13(1)(c)4. of the Wisconsin statutes requires that written notice of the expulsion hearing be sent to the pupil *and* the parent. When the word "and" is used in a statute, it means that both of the stated requirements must be met. *R.H. by the Webster Sch. Dist.*, (624) June 13, 2008. The notice requirements of Wis. Stat. § 120.13(1)(c)4. are mandatory in nature, and a failure to comply with the statute requires reversal of a subsequent expulsion order, even if both the pupil and the parent appear at the expulsion hearing. *See M.R. by the Suring Pub. Sch. Bd. of Educ.*, (126) March 7, 1985, citing *Muskego-Norway Consolidated Sch. v. WERB*, 32 Wis. 2d 478, 83 (1967); *P.K. by the Flambeau Sch. Dist. Bd. of Educ.*, (171) July 17, 1990; *R.B. by the Muskego-Norway Sch. Dist.*, (175) February 29, 1991; *O.S. by the Racine Unified Sch. Dist.*, (548) June 27, 2005; *D.B. by the Cumberland Sch. Dist.*, (669) September 15, 2010; *A.M. by the Germantown Sch. Dist.*, (749) June 19, 2017. Therefore, this error requires reversal.

In addition, the appellant alleges that the expulsion violated the pupil's right to due process because both the matters discussed and the school district superintendent's presence during the

school board's deliberations presented an impermissibly high risk of bias. 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.*

With regard to matters discussed during the board's deliberations, several board members did comment on characteristics of the pupil, his parents, and their family status. Although these statements are questionable, I cannot find that they are so egregious as to overcome the legal presumption articulated in *K.W. by the Tri County Area School Board*.

However, the practice engaged in here of permitting the school district superintendent to remain in the room during the board's deliberations and to act as the acting board secretary, was a critical violation of the concept of a fair hearing before an impartial tribunal. The state superintendent has repeatedly cautioned school boards about the appearance of impropriety that arises when members of the administration are allowed to be with the board during closed deliberations. *R.B. by the Muskego-Norway Sch. Dist.*, (175) February 29, 1991; *B.P. by the Menasha Joint Sch. Dist.*, (197) August 21, 1992; *M.G. by the Maple Sch. Dist.*, (213) December 20, 1993; *B.L. by the Maple Sch. Dist.*, (214) December 28, 1993; *J.S. by the Oak Creek-Franklin Joint Sch. Dist.*, (403) October 1, 1999. The mere presence of a district administrator during deliberations, even if he or she does not utter a word, could intimidate or otherwise affect the board. *J.S. by the Oak Creek-Franklin Joint Sch. Dist.*, (403) October 1, 1999. Therefore, this error requires reversal.

If the district chooses, it may remedy these errors by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *J.D. by the Tomorrow River Sch. Dist.*, (415) May 21, 2000; *N.N. by the Elcho Sch. Dist.*, (373) December 4, 1998; *A.S. by the East Troy Comm. Sch. Dist.*, (300) August 9, 1996; *N.P. by the Crandon Sch. Dist.*, (184) February 7, 1992; *N.P. by the Crandon Sch. Dist.*, (193) May 29, 1992.

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 Oak Creek-Franklin Joint School District Board of Education is reversed.

Dated this 12th day of April, 2018



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

APPEAL RIGHTS

Wis. Stat. § 120.13(10)(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.

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