

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>C ■■■ E ■■■</p> <p>by Germantown School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-07</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 to expel the above-named pupil from the Germantown School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 13, 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 § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated March 21, 2018, from the district administrator of the Germantown School District. The letter advised that a hearing would be held on April 10, 2018, that could result in the pupil's expulsion from the Germantown School District through the 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 repeated

refusal or neglect to obey school rules and 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 stole a toy and sodas from a district guidance counselor's office and made inappropriate sexual statements at school and in the presence of students and staff.

The hearing was held in closed session on April 10, 2018. The pupil's father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's father was 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 repeated refusal or neglect to obey the rules and 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 pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board is dated April 12, 2018. The order stated the pupil was expelled through the pupil's 21st birthday. A transcript of the hearing is part of the record.

DISCUSSION

In reviewing the record in this case and for the reasons set forth below, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

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 interests of the school district demand the pupil's expulsion.

The appeal letter in this case raises several issues that require consideration. Primarily, the appeal argues that the expulsion should be overturned based on numerous alleged failures of the school district to address the pupil's special education needs. With limited exceptions, an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular student. *R.M. by the Oak Creek-Franklin Joint School Dist.*, (711) January 30, 2014. Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. *S.R. by the Chippewa Falls Area Unified School Dist.*, (723) February 25, 2015. Here, there is no evidence in the hearing record that the pupil was identified as a child with a disability. As such, the expulsion order may not be overturned on this basis.

Second, the appeal alleges that evidence presented during the hearing was either insufficient or lacked credibility. In regard to the alleged acts of misconduct against the pupil, it was within the board's discretion to give weight to the evidence and arguments as it deemed appropriate and to judge the credibility of witnesses. *See, e.g., State ex rel.. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W.2d 689 (1976); *D.S. by Nicolet Union high School Dist.*, (702) January 18, 2013. Further, it has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. A school board's findings will be upheld if any reasonable view of the evidence sustains them. *L.P. by the Whitewater*

Unified School Dist., (351) Mar. 31, 1998. Here, neither party contested the factual basis for the expulsion during the hearing, and this factual basis is not challenged on appeal.

Instead, the appeal states two incidents are insufficient to establish a repeated failure to obey school rules. For purposes of Wis. Stat. § 120.13(1)(c), two violations of school rules constitute repeated violation of school rules. *See Jesse M.K. by Tri-Cty. Area Sch. Dist.*, (266) Jan. 2, 1996. There remains an open question as to whether violations of school rules must be of the same kind in order to be “repeated” for purposes of the statute. However, that question is moot for purposes of this appeal, because the school board determined that the pupil engaged in conduct while at school or under the supervision of a school authority that endangered the property, health or safety of others. This finding constitutes independent and sufficient statutory grounds for expulsion and is supported by uncontested evidence in the hearing record. Therefore, the board had sufficient statutory authority to expel the pupil. *Matthew C.M. by Cedarburg Sch. Dist.*, (274) Feb. 14, 1996.


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 §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of C [REDACTED] B [REDACTED] by the Germantown School District Board of Education is affirmed.

Dated this 12th day of June, 2018


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

Parties to this appeal are:

[REDACTED]

[REDACTED]

Jeffrey Holmes
District Administrator
Germantown School District
N104 W13840 Donges Bay Rd.
Germantown, WI 53022

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:

[REDACTED]

[REDACTED]

Germantown School District
c/o Kirk Strang
660 W. Washington Ave., Suite 303
Madison, WI 53703

