Decision and Order No.: 765

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Q[redacted] H[redacted] by Monona Grove School District Board of Education	DECISION AND ORDER Appeal No.: 18-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 Monona Grove School District Board of Education to expel the above-named pupil from the Monona Grove School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 25, 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 Pupil Expulsion Hearing …," dated March 20, 2018, from the superintendent of the Monona Grove School District (the Notice). The Notice advised that a hearing would be held on April 4, 2018, that could result in the pupil's expulsion from the Monona Grove School District through the pupil's 21st birthday. The Notice was sent separately to the pupil and his parents by certified mail. The Notice alleged that the pupil

engaged in conduct while at school or while under the supervision of school authority which endangered the property, health, or safety of others at school. Specifically, the Notice alleged that the pupil engaged in a sexual act at school with another student.

The hearing was held in closed session on April 4, 2018, in front of an independent hearing officer appointed by the school board pursuant to Wis. Stat. § 120.13(1)(e). The pupil and his parents appeared at the hearing with counsel. 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. The pupil stipulated to engaging in a sexual act at school with another student.

After the hearing, the independent hearing officer issued an order for expulsion dated April 9, 2018 (the Order), containing findings of fact, conclusions of law, and a decision directing the pupil be expelled from the school district through the conclusion of the 2019-20 school year with the possibility of early reinstatement. The hearing officer 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 hearing officer further found that the interests of the school demand the pupil's expulsion. The Order, dated April 10, 2018, was mailed separately to the pupil and the pupil's parents.

On April 11, 2018, the school board met in closed session to review the Order. The school board approved the order. The school board's decision was mailed separately to the pupil and the pupil's parents on April 12, 2018.

The Notice, Order, minutes of the expulsion hearing, transcript of the expulsion hearing, hearing exhibits, and the school board's approval of the Order are all 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.

On appeal, the pupil asserts the expulsion must be overturned because hearing officer's determination, adopted by the school board, that the alleged sexual act was nonconsensual violated the pupil's due process rights. The pupil argues this determination was improper because: 1) the determination was based on uncorroborated hearsay; 2) the determination did not sufficiently resolve conflicting witness statements; 3) the determination of the pupil's credibility is factually untenable; and 4) the district failed to disclose certain evidence produced as part of the district's investigation.

As a preliminary matter, there is no dispute that the pupil engaged in conduct that constitutes grounds for expulsion under Wis. Stat. § 120.13(1)(c)1. The pupil admitted to engaging in the sexual act specified in the Notice. The pupil, through his attorney, conceded that the pupil should be expelled for the sexual act. Whether consensual or not, the statutory grounds for expulsion were properly included in the Notice, supported by evidence in the hearing record, and properly reflected in the Order. *O.H. by Milwaukee Pub. Sch. Dist.*, (573) May 8, 2006.

The school board considered whether the sexual contact was consensual for purposes of determining the severity of the expulsion term. School boards are afforded wide latitude in

determining whether an expulsion is an appropriate response to alleged misconduct. *T.H. by Elmbrook Sch. Dist.*, (709) Jan. 13, 2014. 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. Absent extraordinary circumstances or a procedural violation, it would be inappropriate to reverse a school board's determination of what its community requires as a response to misconduct.; *A.D. by Silver Lake J1 Sch. Dist.*, (665) June 28, 2010.

The hearing officer did not err by relying on hearsay to determine the sexual act was nonconsensual. In expulsion hearing, hearsay is admissible and may be relied upon by the hearing officer. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657 (1982); *D.S. by Nicolet Union High Sch. Dist.*, (702) Jan. 18, 2013; *D.P. by Dodgeland Sch. Dist.*, (654) Oct. 20, 2009. *A.L. by the Hartford UHS Sch. Dist.*, (257) August 3, 1995. The superintendent has repeatedly found that a hearing officer is permitted to consider and base its decision upon the testimony of a school official who relates the results of their investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *B.S. by Marshall Sch. Dist.*, (626) July 11, 2008; *Michael M. by Rib Lake Sch. Dist.*, (510) Apr. 19, 2004; *Michael A.W. by Oak Creek Sch. Dist.*, (499) Aug. 5, 2003.

The hearsay statements related by the district in this matter include notes of interviews between district staff and the accused pupil, the accusing pupil, and other witnesses to the act. The pupil stipulated to the accuracy of these notes, in that they correctly describe statements made to district staff. The district conducted several interviews of the accused pupil, both with and without his parents present. The district conducted several interviews of the other pupil who engaged in the sexual act, both with one district staff member and with several staff members present. The district consulted with a forensic interviewer to identify factors useful for assigning

probative value in cases of reported nonconsensual sexual contact. The pupil was able to respond to this hearsay evidence and challenge the probative value of the statements. These circumstances provide more than a sufficient basis for the hearing officer to appropriately weigh the evidence and reasonably conclude the hearsay statements are reliable and have probative value. *See B.R. by Hamilton Sch. Dist.*, (555) August 5, 2005.

The appeal next argues that the hearing officer failed to articulate why the hearing officer did not believe inconsistent statements made by the pupil accused of engaging in a nonconsensual sexual act, but believed inconsistent statements made by the accusing pupil. As the trier of fact, the hearing officer is in the best position to resolve any conflicts in testimony. *A.B. by Milwaukee Public Sch. Dist.*, (657) March 4, 2010. It is within the hearing officer's discretion to resolve conflicting testimony, to give weight to evidence and arguments as the hearing officer deems appropriate, and to judge the credibility of witnesses. *B.B. by Milwaukee Sch. Dist.*, (619) May 6, 2008; *C.B.W. by Kenosha Unified Sch. Dist.*, (539) Apr. 21, 2005. The hearing officer found the accused pupil's testimony was not credible, and the hearing record includes sufficient evidence to support that finding. The school board did not err by adopting the findings of the hearing officer.

Finally, the appeal argues that the district denied the pupil due process by failing to disclose all information gathered as part of the district's investigation, including a statement by a witness that the witness did not see the sexual act. Though school districts are strongly encouraged to do so, there is no general requirement that a district provide copies of exhibits to the pupil prior to the expulsion hearing, let alone disclose a complete record of the district's investigation. *M.J. by Mount Horeb Sch. Dist.*, (710) Jan. 28, 2014; *B.S. by Marshall Sch. Dist.*, (626) July 11, 2008; *N.K. by Marshall Sch. Dist.*, (620) May 15, 2008.

If a school district possesses evidence that exonerates a pupil of the alleged misconduct or is otherwise clearly exculpatory, due process may require the school district to disclose that information (or to abandon the expulsion process altogether). However, the evidence at issue consists of a statement of a pupil who was in close proximity to the sexual act, but was not aware of the act and did not see anything, as well as the existence of a second witness that was also in close proximity to the sexual act. This evidence is not the kind that due process would compel a district to disclose, and the expulsion cannot be overturned on this basis.

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

ORDER

IT IS THEREFORE ORDERED that the expulsion of Q[redacted] H[redacted] by the Monona Grove School District Board of Education is affirmed.

Dated this 24th day of July, 2018

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

Parties to this appeal are:

[redacted]

[redacted]

Daniel Olson
District Administrator
Monona Grove School District
5301 Monona Dr.
Monona, WI 53716-3126

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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[redacted]

Daniel Olson, District Administrator
Monona Grove School District
c/o Douglas E. Witte
Boardman & Clark, LLP
1 S. Pinckney St., Suite 410
Madison, WI 53701