

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J [REDACTED] B [REDACTED]

by Weyauwega-Fremont School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-16

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 Weyauwega-Fremont School District Board of Education to expel the above-named pupil from the Weyauwega-Fremont School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 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 Wis. Stat. § 120.13(1)(c).

FINDINGS OF FACT

On April 11, 2018, the pupil and other members of the Weyauwega-Fremont High School band and choir were preparing to depart from the General Mitchel International Airport in Milwaukee for a weeklong trip to Orlando, Florida. The pupil has Attention Deficit Hyperactivity Disorder (ADHD). Prior to arriving at the airport, the pupil's mother packed his luggage for the trip. She included a bag of art supplies, which contained a small "butterfly" knife. When the pupil

proceeded through the Transportation Safety Administration (TSA) screening, TSA agents discovered and confiscated the knife. The pupil was permitted by TSA to board the flight. School administrators were notified of the incident, and they permitted the pupil to continue on the trip. It was only after the weeklong trip that the school district imposed discipline, initially as a suspension, but later expanded to an expulsion.

The record contains a letter entitled "Notice of Expulsion Hearing," dated April 24, 2018, from the district administrator of the Weyauwega-Fremont School District. The letter advised that a hearing would be held on May 1, 2018, that could result in the pupil's expulsion from the Weyauwega-Fremont 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 conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter also included the particulars of the conduct, which consisted of the knife possession discussed above.

The hearing was held in closed session on May 1, 2018. The pupil and his parents appeared at the hearing without 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.

After the hearing, the school board deliberated in closed session. The school 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 May 1, 2018, was

mailed separately to the pupil and his parents. The order stated the pupil was expelled for one day. Minutes of the school board expulsion 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.

This expulsion appeal raises two issues which require consideration. The appellant’s main contention is that the school district failed to follow its pre-expulsion policies by not conducting a special education evaluation and not introducing evidence of the pupil’s response to intervention plan (“RTI plan”). The pupil’s RTI plan noted that the pupil had ADHD and, based on that condition, stated that he “struggles to gather the necessary materials needed for his upcoming classes in a timely manner.” As such, the RTI plan permitted the pupil to carry a drawstring bag with all of his class materials.

I do not find this to be a basis to overturn the expulsion. Regarding the application of a school board’s own policies, the policy at issue simply restates the requirement under special education law that a manifestation determination must be made if the pupil is a student with a disability. The pupil is not a student with a disability. Based on the limited record before me, I do not see sufficient evidence to support the contention that the school district was “deemed to know”

that the pupil was a student with a disability.¹ As such, a manifestation determination was not required. In addition, the hearing record shows that the pupil's parents presented evidence of the RTI plan to the school board for consideration. The record does not indicate this evidence was withheld at hearing, and it is within the school board's discretion to give weight to this evidence as it deems appropriate. *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.

The second issue requiring consideration relates to the pupil's underlying conduct and the school board's findings. In paragraph seven of the order, the school board determined that the pupil "engaged in disorderly behavior" when the TSA found the knife, and that conduct "endangered the property, health and safety of others, including the property, health and safety of school employees and school board members of the District." In the following paragraph, the school board determined that that same conduct "endangered the health and safety of others causing considerable disruption to the educational interests of others." The state superintendent will uphold a school board's findings if any reasonable view of the evidence sustains them. *See e.g., Kathleen W. by Tri-City Area Sch. Dist.*, (130) May 10, 1985.

Here, there is no reasonable view of the evidence that sustains these findings. It is undisputed both in the record and on appeal that the pupil did not intentionally or knowingly possess the small knife. There was no *mens rea* or ill intent.² The pupil did not even know the knife was there. At worst, the pupil is guilty of an innocuous omission: letting his mother pack his bag. A school board can only expel a student if the school board finds that the student "engaged in

¹ School boards are encouraged to err in favor of conducting a manifestation determination if there is doubt regarding the child's disability status. Here, there is insufficient information in the record to establish that the school district was "deemed to know" that the pupil is a child with a disability.

² All of the school district staff who witnessed the incident stated that the pupil did not knowingly possess the knife and that it was unintentional. One staff member noted that the pupil was sobbing and shaking from the incident. The staff witness accounts are consistent with the pupil's account.

conduct.” The record here does not show that the pupil engaged in any conduct. Therefore, I must reverse the expulsion order.

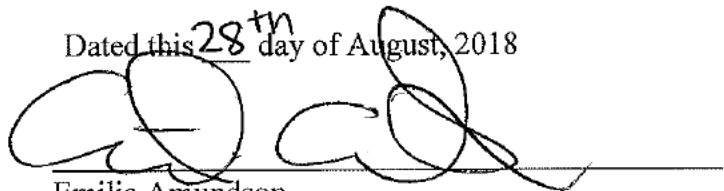
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the requirements of Wis. Stat. §120.13(1)(c).

ORDER

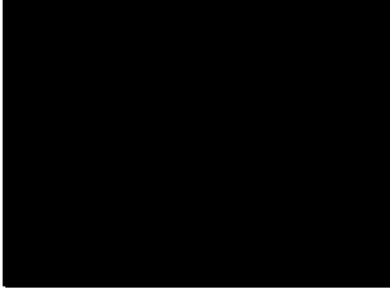
IT IS THEREFORE ORDERED that the expulsion of J [REDACTED] B [REDACTED] by the Weyauwega-Fremont School District Board of Education is REVERSED.

Dated this 28th day of August, 2018



Emilie Amundson
Chief of Staff
Wisconsin Department of Public Instruction

Parties to this appeal are:



Scott Bleck
District Administrator
Weyauwega-Fremont School District
410 E. Ann St.
Weyauwega, WI 54983

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 Wis. Stat. § 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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