

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

I [REDACTED] J [REDACTED]

by New Lisbon School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-18

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 Lisbon School District Board of Education to expel the above-named pupil from the New Lisbon School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 6, 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 Notice of Expulsion Hearing dated October 9, 2018, from the New Lisbon School District grades 7-12 principal. The letter advised that a hearing would be held on October 16, 2018 that could result in the pupil's expulsion from the New Lisbon School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her 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 specifically alleged that the pupil made terroristic threats while at school, which included making the statement, “I’m so freaking close to shooting up this school”.

The hearing was held in closed session on October 16, 2018. The pupil’s parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil’s 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 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 October 23, 2018, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday. The record includes an audio recording of the expulsion hearing, the above-referenced notices and orders, minutes of the school board expulsion hearing, and hearing exhibits.

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 demands the pupil’s expulsion.

The appeal letter in this case raises three issues on appeal. First, the appellant argues that a school board member should have recused herself from the hearing due to a conflict of interest. In reviewing an expulsion appeal, the state superintendent must ensure that the school board was fair and impartial. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014. There is a presumption that public officials, including school board members, discharge their duties fairly, impartially, and in good faith. *K.W. by the Racine Unified School Dist.*, (705) July 30, 2013, citing *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App. 1992).

To overcome the presumption that the board member properly discharged their duty, the record must either contain evidence of actual bias or reflect circumstances that would lead to a high probability of bias or conflict. *D.L. by Wheatland Center Sch. Dist.*, (613) Mar. 27, 2008. Here, the only evidence presented relevant to this question is that the board member's daughter is in the same class as the pupil, and that the board member is Corporation Counsel for the Juneau County Department of Human Services where the student has a pending legal matter unrelated to the expulsion. This evidence does not support a finding of actual bias, and the appellant fails to demonstrate how these circumstances could create a high probability of bias or conflict, as opposed to the mere possibility of bias or conflict. There is insufficient evidence in the record to overcome the presumption that the school board member appropriately discharged their duty in this matter.

Second, the appellant argues that the district inappropriately presented the pupil's disciplinary history in prior years of school was inappropriately presented at the hearing without advance notice to the parents. A school board may not consider allegations of misconduct not included in the notice of hearing for purposes of determining grounds for expulsion. *Joshua S. by D.C. Everest Sch. Dist.*, (170) May 22, 1990. However, a school board may consider allegations

of misconduct not noticed if the information is not used to support the grounds for the pupil's expulsion. *Kevin M. by Oak Creek-Franklin Jt. Sch. Distr.*, (181) Sept. 13, 1991. In this matter, the grounds for expulsion were that the pupil made terroristic threats. The pupil's disciplinary history was not presented in support of the grounds for expulsion, but instead as background information relevant to the board's decision as to whether the interest of the school demands expulsion. Because the school board did not rely on the records as a basis for expulsion, presenting those records at hearing does not constitute reversible error.

Third, the appellant argues the school district should have recognized the pupil as requiring special education services. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of an expulsion appeal under Wis. Stat. § 120.13(1)(c). *C.B. by the Flambeau School Dist.*, (727) June 30, 2015. That is the case with questions raised by the appellant. Instead these questions may be addressed using other complaint and appeal procedures.¹

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

¹ If a parent disagrees with the district's determination that the pupil's behavior that led to the expulsion is not a manifestation or result of the pupil's disability, he or she may request a hearing or file a special education complaint with the department. *See* 34 C.F.R. §§ 300.532(a) and 300.506. A description of the department's special education dispute resolution options are available here: <https://dpi.wi.gov/sped/dispute-resolution>.

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

Dated this 7th day of January, 2019



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

Parties to this appeal are:



Dennis Birr
District Administrator
New Lisbon School District
500 S. Forest St.
Lew Lisbon, WI 53950

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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