

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>R ■ S ■</p> <p>by School District of Caddott Community Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-23</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 School District of Caddott Community Board of Education to expel the above-named pupil from the School District of Caddott Community. This appeal was filed by the pupil and received by the Department of Public Instruction on December 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 Pupil Expulsion Hearing," dated October 23, 2018, from the district administrator of the School District of Caddott Community. The letter advised that a hearing would be held on November 5, 2018, that could result in the pupil's expulsion from the School District of Caddott Community 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 while under the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil exposed his penis to another pupil while masturbating.

The hearing was held in closed session on November 5, 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 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. Specifically, the board found that the pupil masturbated in a school bathroom, then walked out of the bathroom with his penis exposed, and that another pupil saw the pupil's exposed penis. 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, dated November 16, 2018, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday, but eligible for conditional early reinstatement the day after the expulsion hearing.

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.

The appeal letter in this case raises three issues which require consideration. First, the appellant asserts that the district failed to provide the information the administration was going to present in support of expulsion prior to the expulsion hearing. This information included evidence presented at the hearing, as well as a video recording of the relevant area that was not produced at the hearing.

School districts are strongly encouraged to provide copies of exhibits to the pupil prior to an expulsion hearing, because it allows students and their families to better prepare. However, decisions issued by the state superintendent consistently hold that school districts are not required to provide these exhibits prior to the hearing. *See M.J. by Mount Horeb Sch. Dist.*, (710) Jan. 28, 2014; *B.S. by Marshall Sch. Dist.*, (626) July 11, 2008. It is not reversible error for the school district to have failed to provide exhibits to the appellant prior to the hearing.

Second, the appellant asserts that the administration mischaracterized a statement made by a witness in the matter. The administration testified that a pupil who witnessed the incident in this matter declined to give a statement. The appellant contends that in fact, the witness did not see or hear the incident, despite being in close proximity.

Whether testimony by members of the administration is credible is a determination left to the school board. The board is permitted to consider and base its decision upon the testimony of a witness when there are factors establishing the reliability and probative value of such testimony. *C.M. by the Kenosha School Dist.*, (616) April 17, 2008. The pupil and the pupil's family had the opportunity to challenge the credibility of the administration through cross-

examination and respond to the administration's allegations. *See E.H. by the West Allis School Dist.*, (661) May 14, 2010. Further, the student admitted to the conduct that the board ultimately determined as the basis for expulsion. The board's findings are sustained by a reasonable view of the evidence and will not be overturned. *L.P. by the Whitewater Unified School Dist.*, (351) Mar. 31, 1998.

Third, the appellant asserts the school board impartiality may have been impacted by the administration revealing the name of the accuser at the hearing. The accuser is a pupil related to a district employee and local elected official.

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 will discharged 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). There is insufficient evidence in the record to establish that any board member was biased against the pupil, and knowing the identity of a pupil does not in and of itself create a high probability of bias or conflict necessary to overcome the presumption that the board properly discharged its duty in this matter.


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 R [REDACTED] S [REDACTED] by the School District of Caddott Community Board of Education is affirmed.

Dated this 8 day of February, 2019



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

Parties to this appeal are:



Jenny Starck
District Administrator
School District of Caddott Community School District
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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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