

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>D [REDACTED] D [REDACTED]</p> <p>by Slinger School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-22</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 Slinger School District Board of Education to expel the above-named pupil from the Slinger School District. 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 10, 2018, from the district administrator of the Slinger School District. The letter advised that a hearing would be held on October 15, 2018, that could result in the pupil's expulsion from the Slinger 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, and that the pupil was guilty of repeated refusal or neglect to obey the rules. The letter specifically alleged that the pupil possessed throwing knives in his vehicle on school grounds, and had previously had a knife on school grounds in June of 2018.

The hearing was held in closed session on October 15, 2018. The pupil's parents appeared at the hearing with counsel. At the hearing, the pupil's counsel requested the board postpone the hearing for at least a month to be able to prepare for the hearing. The school board denied the request. After the board denied the counsel's request, the counsel and the pupil's parents left the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

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 and repeatedly refused or neglected to obey the rules. 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 is dated October 22, 2018. The order stated the pupil was expelled through his 21st birthday with the ability to apply for conditional early reinstatement. Minutes of the school board expulsion hearing, a transcript of the hearing, and hearing exhibits 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.

The appeal letter in this case raises four issues which require consideration. First, the appellant argues that the pupil has a right to possess throwing knives on school grounds that are locked in the pupil's vehicle. In support, the appellant relies on the Second Amendment of the United States Constitution and Wis. Stat. § 948.61.

Regarding the appellant's constitutional argument, the appellant appears to claim that unless the possession of a dangerous weapon is a crime under state or federal law, then the Second Amendment acts to preempt the district's policy regulating such possession. That is not how the Constitution works. If the Second Amendment guarantees the right for pupils to possess dangerous weapons on school grounds, then no law can infringe on that right. That is, if the Second Amendment provides pupils the right to possess dangerous weapons on school premises, Wis. Stat. § 948.61 is unconstitutional, as is the Gun-Free School Zones Act under 18 USC § 922(q)(2). The appellant fails to cite to any authority that makes the possession of a dangerous weapon on school grounds a right under the Second Amendment. Therefore, the appellant's constitutional argument fails.

As for the appellant's statutory argument, Wis. Stat. § 948.61 makes it a crime to knowingly possess a dangerous weapon on school premises. That statute includes certain exceptions, including for dangerous weapons that are stored in a motor vehicle that is located on school premises for school-sanctioned purposes. However, this statute does not create a right for

a pupil to possess a dangerous weapon on school grounds. Instead, the statute simply does not make that specific possession a crime. No part of Wis. Stat. § 948.61 acts to preempt the board from imposing its own consequences on a pupil in possession of a dangerous weapon on school grounds. Therefore, the district did not violate state or constitutional law by taking disciplinary action against the pupil for the conduct in this matter, and the district properly applied its Policy #834 – Weapons on School Premises to find that the pupil repeatedly refused to or neglected to obey school rules.

Second, the appellants claim that the pupil was denied due process when he was not provided evidence prior to the expulsion 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.

Third, the appellants claim that presenting the pupil's academic and disciplinary history to the board was irrelevant and improper. A school board may consider prior disciplinary history and academic records for purposes of determining whether the interest of the school demands expulsion. *Joshua S. by D. C. Everest Sch. Dist.*, (170) May 22, 1990. This evidence was relevant, noticed, and introduced for a proper purpose.

Fourth, the appellants assert that evidence not provided to the school board at the hearing contradicts testimony by the administration's witness. The appellant claims the video disputes whether the pupil removed a tomato from his truck prior to district administration conducting a

search of his vehicle. However, the pupil consented to the search, and this video has no probative value for purposes of proving or disproving whether the pupil possessed a dangerous weapon on school grounds and is irrelevant for purposes of this appeal.

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 D [REDACTED] D [REDACTED] by the Slinger School District Board of Education is affirmed.

Dated this 11 day of February, 2019



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

Parties to this appeal are:



Daren Sievers
District Administrator
Slinger School District
207 Polk Street
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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.

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