


THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p></p> <p>by Sparta Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 19-EX-01</p>
--	---

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 Sparta Area School District Board of Education to expel the above-named pupil from the Sparta Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 3, 2019.

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

The record contains a letter entitled "Notice of Expulsion Hearing," dated December 3, 2018, from the district administrator of the Sparta Area School District. The letter advised that a hearing would be held on December 12, 2018, that could result in the pupil's expulsion from the Sparta Area School District through his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. Additionally, the letter was sent in Spanish as the pupil's

parents are Spanish-speakers. The letter alleged that the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority, or endangered the property, health or safety of an employee or school board member of the Sparta Area School District which includes a threat to endanger the property, health or safety of others. The letter specifically alleged that on November 26, 2018, the pupil had social media posts of photographs of guns alongside threatening messages directed at Sparta High School.

The hearing was held in closed session on December 12, 2018. 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.

After the hearing, the school board deliberated in closed session. The board found that the pupil did engage in the conduct as alleged, in violation of Wis. Stat. § 120.13(1)(c), which references conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. 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 December 12, 2018, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing, a partial audiotape of the expulsion hearing, statements from teachers and from the appellant-pupil, and evidence presented at the 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 demands the pupil’s expulsion.

The appeal letter in this case raises four issues which require consideration. First, the appellant asserts that the school administration clearly and intentionally used behavior not cited in the expulsion notice as justification for the student’s expulsion. Specifically, appellant asserts that the expulsion hearing notice only referred to misconduct while not at school or while not under the supervision of school authority. This narrow notice, according to appellant, is in contrast to the evidence presented at the hearing which also described events at school on November 26, 2018.

School districts must fully comply with the notice provisions found in Wis. Stat. § 120.13(1)(c)4. Failure to fully comply with the notice provisions of this statute is a fatal error and renders an expulsion decision void. *Michelle R. by Suring Sch. Dist.* (126) Mar. 7, 1995 (p. 4); *See also* decision nos. 144, 166, 459, 465 and 624. One requirement of this statute is that the statutory basis for the expulsion must be reflected in the notice of expulsion hearing; this basis must be supported by evidence in the record and must be reflected in the ultimate findings of the board. *O.H. by Milwaukee Pub. Sch. Dist.*, (573) May 8, 2008.

Sparta Area School District complied with the statutory provision. The expulsion hearing notice properly conveys the statutory basis for the District's interest in expelling the pupil: the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority, or endangered the property, health or safety of an employee or school board member of the Sparta Area School District which includes threats to endanger the property, health or safety of others. Wis. Stat. § 120.13(1)(c). This conduct is specifically described in the notice as "posts of gun photographs with threatening messages directed at Sparta High School." These posts occurred while not at school and not under the supervision of a school authority. Regardless of where the posts were made, the posts constituted a threat against employees or school board members of the school district. That the district discussed how the off-campus actions impacted the school district on November 26, 2018, does not mean the pupil had inadequate notice of the statutory basis for expulsion.

Second, appellant asserts that the school district did not follow standard and accepted procedures during the hearing by not swearing in Russ, who presented the district's case. Whether an oath may or may not have been administered is irrelevant. While testimony under oath is preferable, there is not a statutory or constitutional obligation to do so. *Tyler H. by Milton Sch. Dist.*, (498) June 23, 2003.

Third, appellant alleged the administration's recommendation contained inaccuracies. The appellant argues that the hearing notice should have notified the parents that the administration would discuss district policy and student handbook language applicable to threatening social media posts. However, the administration presented this policy in support of a determination that the interest of the school demands expulsion. Information regarding school

district policy may be properly presented to the school board as context for determining whether the interest of the school demands expulsion, even if that information was not explicitly included in the hearing notice.

Appellant further asserts that the discussion of school district policy and handbook language was factually inaccurate. Specifically, appellant asserts the district does not maintain any written policy against threatening social media posts. Whether the school board actually maintains a written policy against threatening social media posts is immaterial for determining the statutory grounds for expulsion in this matter. Even if the district maintained a written policy of tolerance for social media posts threatening gun violence, the board could still reasonably conclude that such posts constitute conduct endangering the property, health or safety of students, board members, or employees for purposes of Wis. Stat. § 120.13(1)(c).

Furthermore, a school board's findings will generally be upheld if any reasonable view of the evidence sustains them. *N. by the Delavan-Darien School Dist.*, (391) July 23, 1999. Here, a reasonable view of the evidence supports the conclusion that the district's written policies and student handbook language describing a safe school environment imply a policy against threatening social media posts. For the above reasons, the district administration's recommendation does not present a reversible error.

Fourth, in an addendum, appellant asserts that Sparta Area School District's failure to conduct a threat assessment or have a crisis intervention policy is reason for overturning the expulsion. In doing so, appellant cites *J.O. by Oshkosh Sch. Dist.*, (741) Sep. 8, 2016. Appellant mischaracterizes the nature of this reversal. The state superintendent voided that expulsion because the school board "fail[ed] to find that the pupil engaged in one of the statutory reasons for expulsion." *J.O. by Oshkosh Sch. Dist.*, (741) Sep. 8, 2016 (p. 4). Here, the school board did

make a determination that the pupil engaged in conduct constituting statutory grounds for expulsion. The absence of a threat assessment clause in district policy is immaterial 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 [REDACTED] by the Sparta Area School District School District Board of Education is affirmed.

Dated this 4th day of ~~February~~^{March}, 2019


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