Decision and Order No.: 781

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by the School District of Princeton Board of Education	DECISION AND ORDER Appeal No.: 19-EX-03

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 Princeton Board of Education to expel the above-named pupil from the School District of Princeton. This appeal was filed by the pupil and received by the Department of Public Instruction on February 5, 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 § 120.13(1)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Pupil Expulsion Hearing," dated October 4, 2018, from the district administrator of the School District of Princeton. The letter advised that a hearing would be held on October 16, 2018, that could result in the pupil's expulsion from the School District of Princeton through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil, while not at school or while not under

the supervision of a school authority, engaged in conduct which endangered the property, health or safety of others at school or under the supervision of a school authority. The letter specifically alleged that on or about September 30, 2018, the pupil made a threat via social media to numerous students and individuals that he was going to kill people and the people were "gun a die".

The hearing was held in closed session on October 16, 2018. The pupil's father appeared at the hearing without counsel. The school board's attorney asked the pupil's father if he had any questions or objections to the scheduled hearing or participation of the board members. The pupil's father stated he had no objection. At the hearing, the district administration presented evidence concerning the grounds for expulsion. The pupil's father was 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 the hearing notice, and that by doing so engaged in conduct while not at school and 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 interest of the school demands the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated October 25, 2018, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2019-2020 school year, with the opportunity for conditional early reinstatement. The notice of expulsion hearing, expulsion order, minutes of the school board expulsion hearing, and hearing exhibits are part of the record on appeal.

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 that require consideration. First, the appellant argues the school board failed to determine that the pupil made threats that were directed to others at school or under the supervision of a school authority. The appellant argues that the threat as alleged occurred over the weekend, when no pupils were contemporaneously at school or under the supervision of a school authority. The appellant also argues that decision is invalid because the school board failed to identify specific students that were the subjects of the threat.

Upon review, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *C.B. by the Germantown School Dist.*, (763) June 12, 2018; *E.C. by the Oconomowoc Area Sch. Dist.*, (737) June 14, 2016; *L.P. by the Whitewater Unified School Dist.*, (351) Mar. 31, 1998. The board has discretion to give weight to the evidence and arguments, as it deems appropriate, and to judge the credibility of witnesses. *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.

Here, the record contains sufficient evidence that the pupil endangered the safety of others at the School District of Princeton or under the supervision of a Princeton authority. The district provided testimony that two district students received a Snapchat message from the pupil stating "Im gunna kill people. Done with this shit. Keep getti g pushed over the edge… People are gun a die". The record includes a screen shot of this message, sent on Sunday, September 30. The district also presented testimony evidence of a second Snapchat message sent on Monday, October 1, 2019, stating "if you receive this you are staying". Given this evidence, the school board could reasonably conclude that the pupil threatened the safety of Princeton students. *See O.O. v. Nicolet Union High Sch. Dist.*, (775) January 10, 2019; *R.A. v. Nicolet Union High Sch. Dist.,* (773) January 2, 2019.

Furthermore, the school board could reasonably conclude that the pupil's threat endangered the safety of pupils at school or under the supervision of a school authority. A threat made to kill students does not present a danger that is limited to the instant in time in which the threat was issued. Instead, a threat to kill students may create a danger that extends into periods in which the targets of the threat are at school or under the supervision of a school authority. This conclusion is supported by the fact that the district took substantial steps to ensure the safety of district schools in response to the pupil's messages. A reasonable view of the evidence supports the school board's findings, and the expulsion will not be overturned on this basis.

Second, the appellant argues that the district failed to provide the notice of hearing to the pupil and the pupil's parents. Prior to an expulsion hearing, a school district must send copies of the hearing notice to the pupil, and, if the pupil is a minor, to the pupil's parent or guardian. Wis. Stat. § 120.13(1)(c). In this matter, the district's notice of hearing was addressed separately to the pupil and the pupil's parents. The record includes a signed letter from a district staff member

stating the staff member mailed the notice by certified mail and regular mail. The record includes a certified mail receipt for the letter sent to the pupil's parents, but not a receipt for the pupil. Though not necessarily dispositive, the pupil's father stated at the hearing that he had no objection to the hearing notice or the scheduling of the hearing. On balance, the record indicates that the district did provide separate notices to the pupil and the pupil's parents, in compliance with Wis. Stat. § 120.13(1)(c).

Third, the appellant argues that the pupil did not receive due process in the expulsion process. Specifically, the appellant argues that the school district violated the pupil's due process by holding the pupil's hearing *in abstentia*, failing to preserve a recording or transcript of the hearing, and relying upon hearsay evidence.

Regarding the attendance of the pupil, the hearing minutes indicate the pupil's father was asked directly whether he had an objection to the scheduling of the hearing for October 16, 2018. The pupil's father was provided the opportunity to object to holding the hearing without the pupil at this point, but declined. The school board was under no obligation to postpone the properly noticed hearing in the absence of any objection, and the pupil's absence by itself does not constitute a due process violation. *See B.W. by Black River Falls Sch. Dist.*, (542) May 26, 2005; *Alex M. by Racine Unified Sch. Dist.*, (533) Feb. 15, 2005; *I.V. by Kenosha Unified Sch. Dist.*, (538) Apr. 21, 2005.

Regarding the preservation of an audio recording or transcript of the hearing, a school board is only statutorily required to keep written minutes of the expulsion hearing. Wis. Stat. § 120.13(1)(c)(4). The hearing record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *B.B. by the Peshtigo School Dist.*, (660) May 13, 2010.

The hearing record in this matter satisfies the minimum requirements. Though school boards are strongly encouraged to do so, there is no procedural error if the board does not create an audio tape recording or hearing transcript. *J.H. by the Nekoosa School Dist.*, (629) August 11, 2008.

Regarding hearsay evidence, administrative hearing decisions may be based, in part, on uncorroborated hearsay. *Gehin v. WI Gfp. Ins. Bd.*, 2005 WI 16, ¶ 69 (Hearsay is admissible in administrative hearings but does not alone constitute substantial evidence). The same rule applies to expulsion decisions by school boards. *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657 (Ct. App. 1982) (School boards may rely on hearsay provided by school staff). This rule has been consistently applied by the state superintendent in expulsion decisions. *See e.g.*, *T.M. v. Monona Grove Sch. Dist.*, (772) September 26, 2018; *see also* Decision Nos. 242, 257, 383, 395, 404, 405, 419, 428, 441, 492, 499, 506, 510, 513, 514, 542, 555, 593, 599, 600, 616, 626, 634, 640, 654, 683, 699, and 702.

Hearsay evidence in this matter was not solely based on uncorroborated hearsay, as the Snapchat message sent by the pupil is uncontested and included in the record. The school board did not err in admitting and relying, in part, on hearsay evidence.

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 Wis. Stat. §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [redacted] by the School District of Princeton School District Board of Education is affirmed.

Dated this 8th day of April, 2019

Robert Soldner
Assistant State Superintendent of Public Instruction