

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Oostburg School District
Board of Education

DECISION AND ORDER

Appeal No.: 19-EX-04

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 Oostburg School District Board of Education to expel the above-named pupil from the Oostburg School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 18, 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)3.

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated January 14, 2019, from the district administrator of the Oostburg School District. The letter advised that a hearing would be held on January 21, 2019 that could result in the pupil's expulsion from the Oostburg School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his mother 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

[O]n June 22, 2018, [the pupil] was vaping in Driver Education class. On October 6, 2018, he was vaping in the bathroom at our Homecoming Dance. On October 8, 2018, [the pupil] was vaping in the locker room after his Strength and Conditioning class. On December 20, 2017, and June 4, 2018, [the pupil] was flagrantly disrespectful and verbally aggressive toward a teacher, and on October 9, 2018, [the pupil] was displaying a sign on the inside of the door of his locker that included racial and sexual slurs and using threatening language relating to the September 11, 2011, attacks.

The hearing was held in closed session on January 21, 2019. The pupil and his mother, step-father and family support person appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. The pupil admitted to all conduct alleged except for the October 8, 2018 vaping allegation.

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 interest of the school district demands the student's expulsion. The order of expulsion containing the findings of fact and conclusions of law of the school board, dated January 22, 2019, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through age 21 or the end of the 2023-24 school year, with no option of conditional early reentry. The notice of expulsion hearing, expulsion order, minutes of the school board expulsion 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 demands the pupil’s expulsion.

The appeal letter in this case raises six issues which require consideration. First, the appellant argues that expulsion is too severe a sanction for the severity of the incidents that occurred. Second, the appellant argues that there is no evidence that the incident affected any student, other staff or community members. Third, the appellant challenges the sufficiency of evidence supporting the school board’s conclusion that the pupil was a threat, contending “there were no statements gathered or even an expressed feeling of threat by anyone.” Fourth, the appellant argues that there was significant neglect by the school when it sent the pupil home unattended and without a crisis assessment and without calling his mother until half an hour after he had been sent home alone. Fifth, the appellant argues that the expulsion is a direct result of the district administrator’s personal disagreement with the pupil. Finally, the appellant argues that the school could not have considered the pupil to be a threat because he was given the option to withdraw with the understanding that he would be allowed to return for his senior year.

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.

The appellant's first three arguments may be addressed together. The hearing record contains sufficient evidence for the school board to conclude that the pupil endangered the health or safety of others while at school. Hearing exhibit J contained detailed accounts of the two incidents with the teacher, based on a description from two teachers and a sheriff's department deputy. For example, that hearing exhibit contains evidence that on June 4, 2018, the pupil verbally attacked the teacher while she was in a classroom full of students, "[y]elling the F-word, calling her a bitch, saying 'I'm so sick of this shit.' And ... 'Why don't you go kill yourself?'" The record contains the district administrator's statement that the teacher told him that she did not feel safe as a result of the pupil's action and that the administrator then asked a sheriff's deputy to investigate. The administrator further reports that "[t]he deputy interviewed [the teacher] and some students, and concluded that [the pupil's] behaviors clearly warranted a disorderly conduct citation." Given this evidence, the school board could reasonably conclude that the pupil threatened the safety of the teacher. The hearing record also includes a picture of a white board that the administrator found on the inside of the pupil's locker door on October 9, 2018, including "the words/symbols: nigger, faggot, a swastika, I want to die, and 9/11 never forget best day ever." The administrator stated that the sign was "very public and visible when [the pupil's] locker door was open." The pupil admitted all the alleged conduct, except for the October 8, 2018 vaping allegation. No other witnesses were required. *See Raymond O. by D. C. Everest Area Sch. Dist.*, (474) July 22, 2002. Given this evidence, the school board could reasonably conclude that the

pupil threatened the health or safety of other students. In light of that conclusion, Wis. Stat. § 120.13(1)(c) provides that expulsion is an appropriate, and not unlawfully severe, response.

The appellant's argument that the school was negligent when it sent the pupil home alone, without a crisis assessment and prior to calling his mother is irrelevant to the only question on this appeal, namely whether the requirements of Wis. Stat. § 120.13(1)(c) were met. Because the pupil admitted the conduct and there was sufficient evidence for the school board to reasonably conclude that the pupil threatened the health or safety of others, the appellant's suggestion that the expulsion is a result of a personal disagreement between the administrator and the pupil is not convincing. Finally, that the school may have offered an alternative to expulsion prior to the expulsion hearing does not make the school board's decision to expel the pupil unreasonable. The appellant had the opportunity to argue to the school board that such offer showed that the pupil was not a threat. In the order of expulsion, the school board concluded, "By the student's actions, [the pupil] has caused a substantial disruption in the educational environment and safety interests of other students, staff and community. The Board of Education has weighed the interests of [the pupil] and his fellow students, the faculty and the staff, has determined that the appropriate remedy is expulsion, and that the interests of the District demand [the pupil]'s immediate expulsion." This conclusion was reasonable.

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 Oostburg School District Board of Education is affirmed.

Dated this 18th day of April, 2019

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