

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

██████████

by Wisconsin Dells School District
Board of Education

DECISION AND ORDER

Appeal No.: 19-EX-06

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 Wisconsin Dells School District Board of Education to expel the above-named student from the Wisconsin Dells School District. This appeal was filed by the student and received by the Department of Public Instruction on July 12, 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)(e)3.

FINDINGS OF FACT

The record contains a letter with the subject "Notice of Expulsion of ██████████," dated June 4, 2019, from the district administrator of the Wisconsin Dells School District. The letter advised that a hearing would be held on June 10, 2019 that could result in the student's expulsion from the Wisconsin Dells School District through the student's 21st birthday. The letter was sent separately to the student and his parents by certified mail. The letter alleged that the student

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 that [REDACTED] [REDACTED] possessed THC oil and a vape pen while on high school premises on May 29, 2019.

The hearing was held in closed session on June 10, 2019. The student and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The student 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 student 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 interests of the school demand the student's expulsion. The order for expulsion containing the findings of the school board, dated June 12, 2019, was mailed separately to the student and his parents. The order stated the student is expelled through the student's 21st birthday and that he is eligible for a conditional early reinstatement effective Monday, September 9, 2019 if he and his parents satisfy certain conditions. Minutes of the school board expulsion hearing and an audio recording of the expulsion 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. School Dist. v. Burmaster*, 2006 WI App. 17, ¶ 19, 288 Wis. 2d 771. In reviewing an expulsion decision, the state superintendent must ensure 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 student's expulsion.

The appeal letter in this case raises three issues that require consideration. First, the appellants argue that the student was denied due process because the school board denied the family's request to hold the expulsion hearing in open session. Appellants asked the board beforehand not to hold the hearing in closed session, and at the hearing they reiterated their objection to the board going into closed session to consider the student's expulsion.

The school district's decision to conduct the expulsion hearing in closed session complied with the law. Governmental bodies subject to open meetings laws may hold certain kinds of deliberations in closed session. Wis. Stat. § 19.85(1)(f) provides an exception to open meetings requirements where the body is to consider personal information about specific persons "which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to..." The law does not grant a student or family the right to force the district to hold such a deliberation in open session.

Wisconsin law specifically allows the affected student to close an expulsion hearing, but does not give a similar right to have an open session. Wis. Stat. § 120.13(1)(c)4.d. provides that "upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed." By contrast, an expulsion hearing may be conducted in closed session despite the student's or family's objection. *Nicole G by the Ashland School Dist.*, (390) July 1, 1999. The record does not substantiate the claims of misinformation and attempted coercion with regard to the family's request for an open session. These claims appear to be based on a misunderstanding of the law.

Second, the appellants argue that the evidence does not support the school board's findings of fact as to the statutory grounds for expulsion. They argue that the district's evidence does not support the conclusion that the student's possession of illegal items at school endangered anyone. This argument is interwoven with their argument that the penalty is too harsh for the offense.

The state superintendent has repeatedly held that arguments concerning the sufficiency of evidence are generally beyond the scope of review. *L.P. by the Whitewater Unified School Dist.*, (351) Mar. 31, 1998. Furthermore, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *T.S. by the West Allis-West Milwaukee School Dist.*, (684) May 20, 2011. 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 state superintendent has consistently held that harshness and severity of discipline are matters that lie within the discretion of the school board as long as it complied with procedural requirements. *A.J. by Hartford Jt. #1 School Dist.*, (405) Jan. 3, 2000; *B.S. by Fox Point J2 School Dist.*, (424) Oct. 6, 2000.

In this case, the school board found that the student engaged in conduct while at school that endangered the property, health or safety of others, by possessing THC oil in his locker and a vape pen in his pocket. The student admitted these facts at the hearing. The district's witness Ms. Hoch testified that the district views the possession of illegal substances on school grounds as endangering school safety. The state superintendent has held that possession of marijuana, even very small amounts, is sufficient grounds for expulsion. *N.P. by Wisconsin Dells School*

Dist., (719) June 23, 2014. Thus, a reasonable view of the evidence sustains the board's findings, and the expulsion cannot be overturned on this basis.

Third, the appellants assert that the decision to expel this student was at least in part based on his membership in a protected class. They argue the decision is discriminatory because his racial group is subject to expulsion at greater rates than other racial groups. Appellants' Supplemental Brief claims that the board based its decision to expel on his "race, religion and nationality." As evidence, appellants offered testimony from the student and from another witness who stated they knew of other students who were not recommended for expulsion for possessing tobacco or alcohol on school grounds. However, these witnesses admitted they do not have knowledge of disciplinary decisions for specific students. Counsel for the district also differentiated cases concerning legal substances based on the fact that THC is illegal in Wisconsin, unlike alcohol or nicotine, which are only illegal for underage users. As discussed above, the district has adequate legal grounds for its decision.

The appropriate recourse for a student who believes he was discriminated against is to follow the district's non-discrimination policy and procedure, *D.N. by Germantown Sch. Dist.*, (586) Feb. 6, 2006. If he does so, and receives a negative determination from the district, he may file an appeal under Wis. Stat. § 118.13.

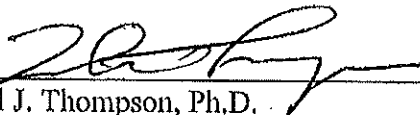
CONCLUSIONS OF LAW

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 Wisconsin
Dells School District Board of Education is affirmed.

Dated this 29th day of August, 2019



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

APPEAL RIGHTS

Wis. Stats. § 120.13(1)(e) 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.