


THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p></p> <p>by Janesville School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 19-EX-12</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 Janesville School District Board of Education to expel the above-named student from the Janesville School District. This appeal was filed by the student and received by the Department of Public Instruction on December 23, 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 dated November 14, 2019 from the district administrator of the Janesville School District. The letter advised that a hearing would be held on December 2, 2019 that could result in the student's expulsion from the Janesville 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 the student engaged in repeated bullying of other students on school grounds at Edison Middle School on October 23, 2019.

The hearing was held by an independent hearing officer in closed session on December 2, 2019. The student and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The student and parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing officer 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 independent hearing officer further found that the interests of the school demand the student's expulsion. The school board met on December 10, 2019, deliberated in closed session, and voted to affirm the independent hearing officer's decision and expel the student. The order for expulsion containing the findings of the school board, dated December 11, 2019, was mailed separately to the student and his parent. The order stated that the student is expelled through his 21st birthday with the opportunity for early reinstatement no earlier than the commencement of the first semester of the 2020-21 school year provided he complies with all of the conditions set forth in the order.

The board failed to submit written minutes or a transcript of the hearing. In a January 16, 2020 response to a DPI request for the minutes or hearing transcript, the school district stated that it "does not produce hearing transcripts or minutes for expulsion hearings." Minutes from the school board meeting affirming the hearing officer's order are part of the record, and the board did submit an audio recording of the hearing as 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 in this case raises two issues that require consideration. First, appellants argue that although the student admittedly engaged in behavior that constitutes a serious offense, he was too young to understand that what he did was wrong. The appeal states that since the student was under 16 years of age he cannot be expelled under Wis. Stat. § 120.13(1)(c)2. The board’s order of expulsion is under § 120.13(1)(c)1., not 2., so the student’s age is not relevant. The Findings of Fact, Conclusions and Expulsion Order of the independent hearing officer made the requisite findings to constitute grounds for expulsion under § (1)(c)1. Thus, the age-related provision does not apply.

Appellants’ argument also implies that the expulsion is inappropriate for this student’s particular characteristics and circumstances, such as age and maturity. This cannot support reversal of a procedurally sound expulsion order. The State Superintendent does not have authority to review expulsions for appropriateness, severity, or harshness. *Kelly B. by Sch. Dist. of Three Lakes*, Decision and Order No. 100 (August 23, 1982); *Lavell A. by Kenosha Unified Sch. Dist.*, Decision and Order No. 147 (January 12, 1987) (p. 7-9). These are matters within the discretion of the school board, as long as it complies with the procedural requirements. *Id.*

Second, appellants argue that the student is not responsible for the conduct because he did not have an IEP evaluation or an IEP or 504 plan in place at the time of the incident. Since the hearing, appellants have made a request for an IEP evaluation and the school district initiated that process concurrently with this appeal. The state superintendent's review does not encompass the separate determination of whether the conduct in this incident was a manifestation of the student's disability.

The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stat. § 120.13(1)(c). *R.S. by the Barron Area School Dist.*, (417) June 9, 2000. Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures.

One procedural issue concerns me. Wis. Stat. § 120.13(1)(c)3. requires school boards to keep written minutes of expulsion hearings. Additionally, when (as here) the board opts to conduct the hearing through an independent hearing officer appointed by the board under Wis. Stat. § 120.13(1)(e)1.b., "the hearing officer or panel shall keep a full record of the hearing. The hearing officer or panel shall inform each party of the right to a complete record of the proceeding. Upon request, the hearing officer or panel shall direct that a transcript of the record be prepared and that a copy of the transcript be given to the pupil and, if the pupil is a minor, the pupil's parent or guardian." Wis. Stat. § 120.13(1)(e)3. I have previously overturned expulsions because the school board failed to provide adequate hearing minutes or an incomplete record. *See Nathan W. v. Wilmot Union High School Dist.*, Decision and Order No. 296 (July 10, 1996); *Douglas G. v. New London School Dist.*, Decision and Order No. 228 (April 29, 1994).

In this case, because the district submitted a full, intelligible recording of the hearing which enables a meaningful review, I will not overturn the expulsion based on this omission. However, I strongly caution school boards against relying solely on audio recordings of expulsion hearings. Such recordings are frequently incomplete or inaudible, and therefore useless in determining what occurred at the hearing. *Donald K. by Little Chute Area School Dist.*, Decision and Order No. 490 (Apr. 22, 2003); *John L. by Greenfield Sch. Dist.*, Decision and Order No. 418 (June 26, 2000) (p. 2, footnote 1); *Dustin L.F. by Altoona Sch. Dist.*, Decision and Order No. 432 (Apr. 11, 2001) (p. 2, footnote 1).

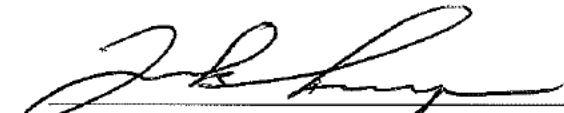
CONCLUSIONS OF LAW

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 Janesville School District Board of Education is affirmed.

Dated this 20th day of February, 2020



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.

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