

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

██████████

by Kenosha Unified School District
Board of Education

DECISION AND ORDER

Appeal No.: 20-EX-01

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 Kenosha Unified School District Board of Education to expel the above-named student from the Kenosha Unified School District. This appeal was filed by the student and received by the Department of Public Instruction on January 17, 2020.

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 22, 2019 from the district administrator of the Kenosha Unified 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 Kenosha Unified School District through the student's 21st birthday. The letter was sent separately to the student and her

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 an argument with another female student while they were on a school bus on November 13, 2019. The letter also alleged that the student threatened to beat up the other student, that the other student struck her, and that she then engaged in a fight with the student and repeatedly threatened to have someone kill her.

The hearing was held by an independent hearing officer (IHO) in closed session on December 2, 2019. The student and her mother 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. The administrative review committee recommended expulsion until age 21 with consideration for Kenosha eSchool at the beginning of the 2020-21 school year.

After the hearing, the IHO 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 IHO further found that the interests of the school demand the student's expulsion. The school board affirmed the IHO's decision on December 10, 2019 and expelled the student. The order for expulsion, dated December 11, 2019, was mailed separately to the student and her parent. The order stated that the student is expelled until the age of 21. Written minutes are part of the record, along with an audio recording of the hearing which is inaudible due to apparent equipment failure.

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, appellant argues that the expulsion order should be overturned because, unlike the recommendation of the administrative review committee, it does not allow consideration for Kenosha eSchool at the beginning of the 2020-21 school year. This argument cannot support reversal of a procedurally sound expulsion order. Suggestions or recommendations for alternative punishment may be offered by school officials, but the school board is not required to follow them. *R.C. by Milwaukee Pub. Sch. Dist.*, Decision and Order No. 651 (Sept. 11, 2009).

The appellant’s second argument is that although she made some poor choices, the expulsion should be overturned because she accepts responsibility and desires to continue her education toward her chosen career path. This is essentially an argument that expulsion is overly punitive in her case. 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.*

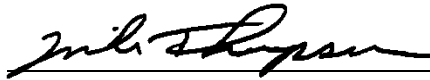
CONCLUSIONS OF LAW

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 Kenosha Unified School District Board of Education is affirmed.

Dated this 1st day of April, 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.

COPIES MAILED TO:



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