

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Middleton-Cross Plains Area School
District Board of Education

DECISION AND ORDER

Appeal No.: 20-EX-04

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(e) from the order of the Middleton-Cross Plains Area School District Board of Education affirming an independent hearing officer's order to expel the above-named pupil from the Middleton-Cross Plains Area School District. This appeal was filed by the pupil's parents and received by the Department of Public Instruction on May 1, 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 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 entitled "Notice of Expulsion Hearing," dated January 24, 2020, from an attorney for the Middleton-Cross Plains Area School District. The letter advised that a hearing would be held on February 7, 2020 that could result in the pupil's expulsion from the Middleton-Cross Plains Area School District through his 21st birthday. The letter was sent

separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of a school authority that endangered the property, health, or safety of others at school or under the supervision of school authorities. The letter also alleged that the pupil engaged in conduct while not at school or not under the supervision of a school authority that endangered the property, health, or safety of others at school or under the supervision of school authorities. The letter specifically alleged that

1. On or about January 15, 2019 the pupil while at school, made threats toward another student that he would “stab him 17 times” and that he “had practiced.” He also made comments to the student that he would “shoot up the classroom” and “blow up the classroom with a grenade.”
2. On or about January 14, 2020 the pupil, while at school, made threatening statements to other students and threats regarding the school generally. A student reported that the pupil made statements concerning school shootings and stated words to the effect that the [sic] wanted to see “blood pour from the student’s head.”
3. On or about January 18, 2020 the pupil, while away from school, made comments to a Middleton Police Officer admitting that he had made the above threats to a female student at Middleton High School. He stated that he wanted to hurt the female student and possibly shoot up Middleton High School and that he was serious about the threats. The pupil also stated that he has thought about “shooting up the school” multiple times each day since mid-December 2019.
4. On or about January 23, 2020 the school district was given a “warning” from a mental health care provider that the pupil, while at the mental health facility, made comments about going to the school and “shooting it up” and about “committing suicide by cop.”

The letter explained that the hearing would be conducted by a hearing officer appointed by the school board.

The hearing was held before an independent hearing officer on February 7, 2020. The pupil and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

The hearing officer found that the pupil engaged in conduct while at school or under the supervision of a school authority that endangered the property, health, or safety of others at school. The hearing officer also found that the pupil engaged in conduct while not at school or not under the supervision of a school authority that endangered the property, health or safety of others at school. The hearing officer further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the hearing officer, dated February 14, 2020, was mailed separately to the pupil and his parents. The order stated the pupil was expelled for the remainder of high school.

The decision of the independent hearing officer was reviewed by the school board on February 24, 2020. The board approved the recommendation of the hearing officer and notified the pupil and his parents of that approval by mail on February 24, 2020. Audio and video recordings of the expulsion hearing are part of the record.

DISCUSSION

The expulsion statute –Wis. Stat. § 120.13(1)(c) and (e) – 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 two related issues which require consideration. The pupil contends that the hearing officer and the school board did not fully consider the pupil's disabilities when they decided to expel the pupil and, specifically, that the district delayed

making a formal disability determination for the pupil until after the expulsion hearing was held, despite having knowledge of his need for evaluation and assistance. In addition, the pupil contends that the school district did not follow the district's policy and procedure manual when it failed to make a manifestation determination based on the pupil's Section 504 plan, which was finalized after the expulsion hearing on February 19, 2020.

The state superintendent has consistently held that an expulsion appeal is not the appropriate context within which to challenge a school district's application of special education provisions to a particular student. *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (January 30, 2014); *Daniel O. v. Kenosha Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 704 (June 4, 2013); *N.K. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 620 (May 15, 2008); *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. *S.R. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 723 (February 25, 2015). Here, it is undisputed that the pupil was not identified as a child with a disability prior to the expulsion hearing. It is also undisputed that the pupil was referred for a special education assessment following the January 14, 2020 incident and that the assessment was pending at the time of the expulsion hearing. The family has filed a complaint with the Department of Public Instruction under the Individuals with Disabilities Education Act (IDEA) raising the same concerns raised in this expulsion appeal. The IDEA complaint process is the appropriate setting to address those concerns.

The pupil contends that the district failed to follow its Administrative Policy and Procedure Manual entry number 447.3 titled "Student Suspension/Expulsion" which provides:

Additional Expulsion Considerations for a Student in Special Education

If a student is eligible to receive or is receiving special education services, the school district does not have the ability to unilaterally change a special education student's placement, but may in limited circumstances place the student in an interim alternative educational setting. Section 504 of the Rehabilitation Act of 1973 includes a manifestation determination requirement, similar to the Individuals with Disabilities Education Act (IDEA), in connection with student discipline. In general, any placement changes must be made by the Individual Education Program (IEP) team, and additional procedural protections are provided....

(Record at 104.)

This provision incorporates in district policy some of the requirements of the IDEA and Section 504 of the Rehabilitation Act. As already discussed, an expulsion appeal is not the appropriate forum to address the district's application of special education procedures to the pupil.

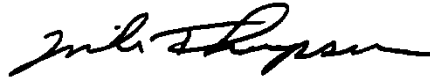
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the hearing officer and the school board complied with all of the procedural requirements of Wis. Stat. § 120.13(1)(e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Middleton-Cross Plains Area School District Board of Education is affirmed.

Dated this 26th day of June, 2020



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

APPEAL RIGHTS

Wis. Stat. § 120.13(1)(e)3 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 Wis. Stat. § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:

[REDACTED]

[REDACTED]

[REDACTED]

Dana Monogue
District Administrator
Middleton-Cross Plains Area School District
7106 South Ave
Middleton, WI 53562

COPIES MAILED TO:

[REDACTED]

[REDACTED]

Jon E. Anderson
Husch Blackwell LLP
33 East Main Street, Suite 300
Madison, WI 53703