

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by New Richmond School District
Board of Education

DECISION AND ORDER

Appeal No.: 20-EX-11

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 New Richmond School District Board of Education to expel the above-named pupil from the New Richmond School District. This appeal was filed by counsel for the pupil and received by the Department of Public Instruction on December 21, 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)(c).

FINDINGS OF FACT

The record contains a letter entitled “Notice of Pupil Expulsion Hearing,” dated November 4, 2020, from the district administrator of the New Richmond School District. The letter advised that a hearing would be held on November 11, 2020 that could result in the pupil’s expulsion from the New Richmond School District through her 21st birthday. The letter was sent

separately to the pupil and her 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 that:

[o]n Friday, October 23, 2020, at approximately 1:00 p.m., [the pupil] gave another student a \$100.00-dollar bill. The \$100.00-dollar bill was payment for a cartridge, that she admitted knew contained THC, that was supposed to be delivered to [the pupil] after school on October 23, 2020. Heidi Link, New Richmond High School Assistant Principal, was able to confiscate the cartridge containing TCH [sic], prior to it being delivered to [the pupil]. The field test of the cartridge conducted by School Resource Officer Aaron Anderson, indicated a high concentration of THC in the cartridge.

The hearing was held in closed session on November 11, 2020. The pupil and her parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, her parents and her counsel 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 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 interests of the district demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated November 11, 2020, was mailed separately to the pupil and her mother. The order stated the pupil was expelled through her 21st birthday. Minutes of the school board 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. Sch. Dist. v. Burmaster*, 2006 WI App. 17, ¶ 19, 288 Wis. 2d 771, 709

N.W.2d 73. 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 interests of the school district demand the pupil's expulsion.

The appeal letter in this case raises several issues which require consideration. Appellant argues that: the conduct for which she was expelled was a *de minimus* drug violation which was not criminal; expulsion until her 21st birthday is "an overkill sentence" and the two-week suspension she served should be sufficient, especially given that the district had not "promulgated any enunciated no-tolerance policy"; and it is unknown whether the other pupil involved in the transaction was ever disciplined.

The first two issues can be considered together. The State Superintendent has repeatedly held that the decision to expel and the length of the expulsion are within the discretion of the school board. *S.E.S. v. Hayward Cmty. Sch. Dist. Bd. of Educ.*, Decision and Order No. 579 (August 17, 2006). On review, the State Superintendent will not second-guess the appropriateness of a school board's determination absent extraordinary circumstances or a violation of procedural requirements. *C.T. v. Milwaukee Pub. Sch.*, Decision and Order No. 718 (May 22, 2014); *Greenfield Sch. Dist.*, Decision and Order No. 798 (September 10, 2020). School boards are afforded wide latitude in determining whether expulsion is the appropriate response to a pupil's conduct. *T.R. v. Nicolet Sch. Dist. Bd. of Educ.*, Decision and Order No. 707 (Dec. 17, 2013).

The pupil has not alleged any violation of the procedural requirements. A review of the record confirms that the required statutory procedures were followed, the board's decision was based on established statutory grounds, and that the board determined the interests of the school

district demanded the pupil's expulsion. There are also no extraordinary circumstances present. The pupil admitted that she gave money at school to another pupil with the intent to purchase a cartridge she knew contained THC. The board determined that drug transactions at school were not acceptable and that expulsion was the appropriate punishment. The State Superintendent will not disturb the board's reasonable findings.

Further, the existence of a "no-tolerance policy" or whether the District followed such a policy is irrelevant to this review. *Justin S. v. Marshfield Sch. Dist. Bd. of Educ.*, Decision and Order No. 361 (May 27, 1998). The record reflects that the district's Student Handbook includes a warning that the administration "reserves the right, in its sole discretion, to recommend expulsion in the first offense or any other disciplinary action that they deem appropriate to the case at hand." Even so, a district's policies are not determinative or controlling. *See Justin S.* The district must merely satisfy the procedural requirements of Wis. Stat. § 120.13(1)(c) in determining that the pupil's conduct endangered the property, safety or health of other students. There is no requirement that this finding must be made based on any district policy.

Finally, pupil expulsions are considered on a case-by-case basis and the treatment of other pupils is not relevant to review, even when the other pupil may have been involved in similar conduct. *Aron E. P. v. Sturgeon Bay Sch. Dist. Bd. of Educ.*, Decision and Order No. 341 (Dec. 17, 1997); *H.S. v. Webster Sch. Dist. Bd. of Educ.*, Decision and Order 745 (Dec. 29, 2016). This is true even when the pupils are involved in the same drug transaction. *See H.S.* While the record does not reflect what discipline (if any) the pupil that sold the cartridge faced, that discipline is irrelevant to the review of the board's actions with respect to this pupil.

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 substantive and procedural requirements of Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the New Richmond School District Board of Education is affirmed.

Dated this 9th day of Feb., 2021



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

APPEAL RIGHTS

Wis. Stat. § 120.13(1)(c) 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]

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