

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p></p> <p>by McFarland School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 21-EX-01</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 McFarland School District Board of Education to expel the above-named pupil from the McFarland School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 5, 2021.

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 Expulsion Hearing,” dated November 8, 2018, from the district administrator of the McFarland School District. The letter advised that a hearing would be held on November 27, 2018 that could result in the pupil’s expulsion from the McFarland School District through the pupil’s 21st birthday. The letter was sent separately, by certified mail, to: the pupil; the pupil’s mother; and the pupil’s father. 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:

- 1) On or about November 2, 2018, [the pupil] possessed an airsoft BB gun on the school grounds of Indian Mound Middle School, and
- 2) On or about November 2, 2018, [the pupil] displayed an airsoft BB gun to four students and made threatening statements while on the school grounds of Indian Mound Middle School.

The hearing was held in closed session on November 27, 2018. The pupil and both his parents appeared at the hearing without 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.

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 school demand the student's expulsion. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated December 4, 2018, was mailed separately to: the pupil; his mother; and his father. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing and a 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. 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. These parameters of the state superintendent's role on review are well-settled and, as noted by the Wisconsin Supreme Court, "embedded in Wisconsin school law". *Madison Metro. Sch. Dist. v. Wisconsin Dept. of Pub. Instruction*, 199 Wis.2d 1, 17, 543 N.W.2d 843 (1995).

The appeal letter and briefs in this case raise several issues which require consideration. Generally, Appellant argues that his constitutional right to attend public school required the district to provide him with procedural protections that were not offered in this matter. Specifically, Appellant asserts that the district improperly relied on hearsay testimony at the expulsion hearing.

Given their constitutionally-protected interest in an education, students must be afforded procedural due process when that interest is threatened by expulsion. *See generally Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975). However, due process in a student expulsion hearing "is not to be equated... with that essential to a criminal trial or a juvenile court delinquency proceeding." *Linwood v. Bd. of Ed. of City of Peoria*, 463 F.2d 763, 770 (7th Cir. 1972). The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Bunker v. Lab. & Indus. Rev. Comm'n*, 2002 WI App. 216, ¶ 12, 257 Wis.2d 255, 650 N.W.2d 864. A district's compliance with the statutory procedures set forth in Wis. Stat. § 120.13(1)(c) provide the student the meaningful opportunity to be heard in meaningful manner. Therefore, when a district complies with the statutory procedures set forth in the expulsion statute, the requirements of procedural due process are met. *B.R. v. Hamilton Sch. Dist. Bd. of Educ.*, Decision and Order No. 555 (Aug. 5, 2005). Appellant has argued at length that an even stricter standard should be applied, which affords greater procedural protections. The State Superintendent declines to disturb the long-standing, and well-

reasoned, standard articulated in case law and previous expulsion decisions that compliance with the statutory procedures of Wis. Stat. § 120.13(1)(c) affords students the necessary procedural due process in expulsion matters.

Appellant specifically argues that the district improperly relied on hearsay testimony. Two witnesses testified at the expulsion hearing for the district: the principal of Appellant's school; and the School Resource Officer (SRO) involved in investigating the incident leading to the expulsion hearing. During the principal's testimony, he summarized the Incident Report (which he co-authored) that was introduced as an exhibit at the hearing. As part of his testimony, he recounted statements made to him about the incident by students as well as an employee of a youth center Appellant attended. Expulsions can be based on the hearsay testimony of school officials. *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 668 321 N.W.2d 334 (1982). This hearsay testimony necessarily will consist of statements made by students and other individuals that the school officials speak with in the course of their investigations. A board may base its decision, even entirely, on the hearsay testimony of school officials as to statements made by witnesses. *Kathleen W. v. Tri-Cnty. Area Sch. Bd.*, Decision and Order No. 130 (May 10, 1985); *Courtney R. v. Germantown Sch. Dist. Bd of Educ.*, Decision and Order No. 278 (Mar. 21, 1989).

With respect to the testimony of the SRO, the State Superintendent has repeatedly found that there is no reason to distinguish between testimony from school personnel that conduct investigations and police officers who conduct investigations. *Christopher W. v. Tomah Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 247 (Apr. 21, 1995). A school board may base its decision on such testimony when there are factors establishing the reliability and probative value of such testimony. *D.S. v. Nicolet Union Sch Dist. Bd. of Educ.*, Decision and Order No.

702 (Jan. 18, 2013). Appellant has not offered any argument challenging the reliability or value of the testimony of the SRO in this matter; he simply argues any hearsay testimony offered by the SRO must be disregarded simply because the SRO is not technically a “school official”. The State Superintendent declines to disturb the findings in a long line of previous expulsion cases that the inherent reliability and value in testimony from police officers who conducted the investigation into the circumstances leading to the expulsion is indistinguishable from the testimony of school officials that may have also conducted the investigation.

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 McFarland School District Board of Education is affirmed.

Dated this 1st day of April, 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]

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