

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Muskego-Norway School District
Board of Education

DECISION AND ORDER

Appeal No.: 21-EX-03

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 Muskego-Norway School District Board of Education to expel the above-named pupil from the Muskego-Norway School District. This appeal was filed by the pupil's parents and received by the Department of Public Instruction on May 6, 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 notice of expulsion hearing dated February 23, 2021, from an assistant superintendent of the Muskego-Norway School District. The letter advised that a hearing would be held on March 1, 2021 that could result in the pupil's expulsion from the Muskego-Norway 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 school authority, as well as conduct while not at school, which endangered the property, health, or safety of others at school as well as constituting repeated refusal or neglect to obey school rules. The letter specifically alleged that:

- A. On February 3, 2021, [the pupil] pulled a plastic bag over another student's head while in class. He subsequently admitted to Lake Denoon administration and the school resource officer that he engaged in this conduct.
- B. On February 3, 2021, [the pupil] used his phone to repeatedly contact the student via Snapchat, sending messages including "Nigger" and/or "Nigga T[]." "Tell people that I didn't hurt you." "Tell people that you feel safe."
- C. According to the student, these were the culmination of a pattern of bullying and harassment from [the pupil] who recently began targeting the student and calling him a "snitch" over discipline issued to another student over bullying.

The letter also alleged that the pupil has a record of previous behavioral misconduct.

The hearing was held in closed session on March 1, 2021. 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.

After the hearing, the school board deliberated in closed session. The board found that the pupil engaged in conduct while at school and while under the supervision of a school authority which endangered the property, health, or safety of others, engaged in conduct while not at school and not under the supervision of a school authority which endangered the property, health or safety of others, and repeatedly neglected to follow school rules. The school board 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 school board, dated March 8, 2021, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2022-2023 school year, with the ability to apply for early readmittance to

be effective at the beginning of the 2021-2022 school year. A transcript of the expulsion hearing is 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 demands the pupil’s expulsion.

The appellants in this case raise three issues which require consideration. First, they contend that the expulsion process was defective and that the school board did not comply fully with Wis. Stat. § 120.13(1)(c). Second, the appellants contend that the pupil’s actions did not warrant the extreme sanction of an expulsion and that the board should have considered his age. Third, the appellants contend that the pupil was singled out for expulsion while other students were not.

Contrary to the appellants’ assertion, the school board complied with the requirements of Wis. Stat. § 120.13(1)(c). The appellants do not point to any specific statutory provision with which the school board did not comply. In their brief, the appellants cite three alleged defects in the expulsion process: that the pupil’s father was not given an opportunity to be heard during the school district’s investigation into the incident; that the administration interviewed witnesses after it had made the decision to seek expulsion; and that the school did not produce the victim or the victim’s mother at the expulsion hearing, depriving the appellants of the ability to cross-

examine them. The state superintendent's role in reviewing an expulsion appeal does not include scrutinizing the investigation or steps taken by the district prior to its issuance of written notice of an expulsion hearing. With respect to the third alleged defect, the pupil has no right to cross-examine students who accuse the pupil of misconduct and who are not called as witnesses at the hearing. *N.B. v. Pulaski Cmty. Sch. Dist. Bd. of Educ.*, Decision and Order No. 730 (Sept. 25, 2015). Further, this issue was not raised before the school board. As such, it is beyond the scope of my review. *Id.*

Next, the appellants contend that the pupil should not have been expelled because he is a child, his actions were "an obvious joke" and "not a credible threat," and he had no prior school suspensions or expulsions. A school board's findings will be upheld if any reasonable view of the evidence sustains them. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *C.B. v. Germantown Sch. Dist. Bd. of Educ.*, Decision and Order No. 763 (June 12, 2018). In this case, in addition to other supporting evidence, a teacher testified that he witnessed the pupil pull a bag over another student's head. The teacher also testified that the pupil's actions did not appear to have been invited and that the victim was in distress and resisted the bag being over his head. It was reasonable for the school board to determine that the pupil endangered the other student's health or safety.

The decision to expel a student and for how long are within the complete discretion of the school board as long as it complies with all the procedural requirements of Wis. Stat. § 120.13(1)(c). *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *I.B. v. Nicolet UHS Sch. Dist. Bd. of Educ.*, Decision and Order No. 716 (Feb. 14, 2014); *Peter F. v. Suring Sch. Dist. Bd. of Educ.*, Decision and Order No. 471 (July 18, 2002). The

school board is in the best position to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *C.T. v. Milwaukee Pub. Schs.*, Decision and Order No. 718 (May 22, 2014); *A.M. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 703 (Feb. 18, 2013). The appellants have specified no extraordinary circumstance here. Although the appellants complain that the school board “rubber-stamped” the administration’s expulsion recommendation without giving due consideration to the pupil’s age (13 years), the school board expelled the pupil for a significantly shorter period of time than the administration had recommended. Regardless, it would have been within the school board’s discretion to adopt the administration’s recommendation.

Finally, the appellants contend that the pupil was used as a scapegoat to appease the victim and that other students who bullied the victim were not subject to expulsion. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014); *C.A. v. Merrill Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 692 (Feb. 15, 2012); *N. H. v. Germantown Sch. Dist. Bd. of Educ.*, Decision & Order No. 681 (May 2, 2011). As a general rule, and one that applies in this case, I do not have the authority to address issues of fairness and unevenness of disciplinary measures. *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721

(Aug. 18, 2014); *A.B. v. Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 453 (Feb. 1, 2002).

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

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 Muskego-Norway School District Board of Education is affirmed.

Dated this 28th day of June, 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] and [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
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