

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Sun Prairie Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-04

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 Sun Prairie Area School District Board of Education to expel the above-named pupil from the Sun Prairie Area School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on April 8, 2022.

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 March 30, 2022, from the district superintendent of the Sun Prairie Area School District. The letter advised that a hearing would be held on April 4, 2022 that could result in the pupil’s expulsion from the Sun Prairie Area 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 repeated

refusal or neglect to obey school rules and engaged in conduct while at school or while under the supervision of a school authority that endangered the property, health or safety of others at school or under the supervision of a school authority. The letter specifically alleged that “On March 17, 2022, while on the grounds of Cardinal Heights Upper Middle School, [the pupil] engaged in a major physical altercation that disrupted the learning environment of the school and resulted in the battery of other students.” The letter alleged that the pupil “was seen in the hallway wrestling with a female student and eventually on the ground throwing punches and kicks. She also exhibited symptoms consistent with a concussion.” The letter described eight behavioral referrals for the pupil since the start of the 2021-22 school year and noted “Since the beginning of the year, [the pupil] has entered the building but has not regularly attended class. She has an overall absence rate of 88.72%. This includes 18 unexcused tardies and 247 class periods with unexcused absences.”

The hearing was held in closed session on April 4, 2022. The pupil, her mother and her aunt appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her representatives 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 repeated refusal or neglect to obey school rules and in conduct while at school or while under the supervision of a school authority that endangered the property, health, or safety of others. The school board further found that the interests of the school demand the pupil's expulsion. The order of expulsion containing the findings of fact and conclusions of law of the school board is dated April 6, 2022. The order stated the pupil was expelled through her

21st birthday and provided that she would be eligible for reinstatement no earlier than September 6, 2022 (start of the 2022-23 school year) if she complied with certain conditions. An audio recording 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 demand the pupil’s expulsion.

Appellant raises two issues which require consideration. First, appellant contends that the board’s decision to expel the pupil was based on racial discrimination. Appellant notes that the pupil is black and that “kicking her out of school just opened the door [to the] school to prison pipeline that has been set in place for our black kids that they would fall into a for profit system, profit over people.” Appellant contends that the board’s expulsion decision is an example of “lack of empathy, compassion and poor treatment of colored people within this white system of oppression.” Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *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). 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. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *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). This does not minimize the seriousness of appellant's allegations. If the pupil believes she was discriminated against on the basis of her race, she may follow the district's non-discrimination policy and procedure to file a complaint with the district. If she does so and receives a negative determination from the district, she may file an appeal under Wis. Stat. § 118.13(2)(b). *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *D.N. v. Germantown Sch. Dist. Bd. of Educ.*, Decision and Order No. 586 (Feb. 6, 2007).

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). *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020). 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. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *C.T. v. Milwaukee Pub. Schs.*, Decision and Order No. 718 (May 22, 2014). As mentioned above, an expulsion appeal is not the proper venue for addressing any racial discrimination that may have occurred. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16,

2022). I see no extraordinary circumstance here that would prompt me to overrule the determination of the board that expulsion is the appropriate response to the pupil's actions.

In addition to seeking reversal of the expulsion, appellant seeks a formal apology and monetary assistance. Wis. Stat. § 120.13(1)(c)3 provides that upon receipt of an appeal of an expulsion decision, the state superintendent "shall, upon review, approve, reverse or modify the decision." That provision describes the extent of my authority in an expulsion appeal. I have no authority to order the board to issue an apology or to provide monetary assistance to the pupil.

One issue not raised by appellant warrants comment. Wis. Stat. § 120.13(1)(c)3 requires "[u]pon the ordering by the school board of the expulsion of a pupil, the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian." In an April 8, 2022 letter, the Department of Public Instruction asked the district to send the hearing record, consisting of "the notice of hearing, the expulsion order, proof of separate mailing or service of the notice of hearing and expulsion order upon the minor pupil and parents, the minutes of the hearing, a tape or transcript of the hearing if one was made, and any documents submitted as evidence at the hearing." The record provided by the district contains the district's Findings, Conclusions and Order of Expulsion but does not include proof of separate mailing or service of the expulsion order upon the minor pupil and parents. In its brief on this appeal, the district states, "The Board sent [the pupil] and the Appellant the Order on April 7, 2022." Based on this statement and because appellant has not alleged that the board failed to mail the expulsion order, I will not reverse the expulsion based on the failure of the record to contain proof of mailing of the expulsion order.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion. This should not be taken as lack of

concern for the consequences of expulsion to the pupil, an 8th grader. I note that the school district has laid out a pathway to reentry to schooling in a physical school building through the conditions for reinstatement set out in the expulsion order. It is a detailed pathway. I encourage the school district to support the pupil and her family along the steps of this path in order to provide an education to the pupil at the soonest appropriate time.

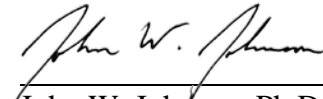
CONCLUSIONS OF LAW

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 Sun Prairie Area School District Board of Education is affirmed.

Dated this 26th day of May, 2022



John W. Johnson, 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]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Brad Saron
District Administrator
Sun Prairie Area School District
501 South Bird Street
Sun Prairie, WI 53590

COPIES MAILED TO:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Shana R. Lewis
Renning, Lewis & Lacy, s.c.
660 W. Washington Avenue, Suite 303
Madison, WI 53703