

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

██████████

by Fond du Lac School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-08

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(e)3 from the order of the Fond du Lac School District Board of Education to expel the above-named pupil from the Fond du Lac School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on June 1, 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 hearing before the independent hearing officer. 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 Pupil Expulsion Hearing,” dated October 12, 2021, from the superintendent of the Fond du Lac School District. The letter advised that a hearing would be held on October 21, 2021 that could result in the pupil’s expulsion from the Fond du Lac 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 while under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that “on or about October 5, 2021 the pupil physically assaulted another student at Fond du Lac High School.”

The hearing was held before an independent hearing officer in closed session on October 21, 2021. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 while under the supervision of a school authority which endangered the property, health, or safety of others. The hearing officer further found that the interest of the school demands the pupil’s expulsion. The expulsion order containing the findings of fact of the hearing officer, dated October 21, 2021, was sent separately to the pupil and her mother on October 26, 2021. The order stated the pupil was expelled through her 21st birthday and allowed for a conditional, probationary, early return as soon as the first semester of 2022-2023 school year if the pupil adhered to certain conditions. The decision of the independent hearing officer was reviewed by the school board on November 8, 2021. The board affirmed the findings of fact of the hearing officer and expelled the pupil until her 21st birthday, without the possibility of a conditional early return. The board’s order was sent to the pupil by mail on November 9, 2021. Minutes of the expulsion hearing and an audio recording 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 demands the pupil's expulsion.

Appellant raises several issues which require consideration. First, appellant seeks to reduce the period of expulsion, complaining that the expulsion is "rather harsh" for the pupil's first offense, and asks that the pupil be allowed to complete her junior and senior years at an in-person school. 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) and (e). *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *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. *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *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). 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.

Second, appellant contends that the pupil did not hit or assault anyone and states the pupil was never “involved in any arguments, fights, or anything of that nature in her life.” A school board’s findings will be upheld if any reasonable view of the evidence sustains them. *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); *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, witness testimony at the hearing was sufficient to sustain the conclusion by the hearing examiner and the school board that the pupil physically assaulted another student. As the hearing officer noted in his decision:

SRO officer Matthew Chevremont testified that although he did not have contact with [the pupil] on October 5, he spoke to SRO officer Brown who saw [the pupil] try to attack another student involved in the fight, directed [the pupil] to stay away from the group that was fighting and ultimately took [the pupil] to the ground, cuffed her and put her in his office. Officer Chevremont reviewed video and observed [the pupil] run at two girls who were fighting and start punching at one of the girls before she was grabbed and thrown to the floor. Thereafter she tried to get back to the two fighting girls but was detained and handcuffed by Officer Brown.

It was therefore reasonable for the school board to determine that the pupil endangered another student’s health or safety.

Appellant states that the pupil had COVID on the day of the altercation and suggests that COVID may have altered the pupil’s thinking. The pupil’s father made this argument at the expulsion hearing and the hearing officer and the school board had the opportunity to consider that argument when they determined that expulsion was appropriate. Although the hearing officer or the school board could have chosen not to expel the pupil, their decision to expel was not unreasonable based on the evidence introduced at the hearing.

Appellant states that the pupil has taken full responsibility for her actions, has learned her lesson and has apologized for her behavior. Appellant also states that the pupil has improved her

grades since her expulsion. Although the pupil's actions following expulsion may be commendable, they do not affect whether the school board's expulsion was legally proper. I review the decision of the school board based solely on the record before the school board.

Finally, appellant included with her appeal a newspaper article dated May 27, 2016, reporting that a male freshman student was expelled from Fond du Lac High School for inappropriate behavior and harassing a female student for the remainder of the 2015-2016 school year and all of the 2016-2017 school year with an early return possible for the first semester of 2016-2017 if certain conditions were met. 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). 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).

In reviewing the record in this case, I find that the school district complied with all of the procedural requirements. I therefore affirm this expulsion. However, consistent with the hearing officer's decision, I am concerned about the length of the expulsion requested by the district and ordered by the board. I encourage the district to find some pathway to allow the pupil to return to in-person instruction.

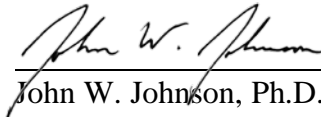
CONCLUSIONS OF LAW

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)(e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Fond du Lac School District Board of Education is affirmed.

Dated this 29th day of July, 2022



John W. Johnson, 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]

[REDACTED]
[REDACTED]
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