

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Racine Unified School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-11

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(e) from the order of the Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction Office of Legal Services on July 18, 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 expulsion hearing. The state superintendent's review authority is specified in Wis. Stat. § 120.13(1)(e).

FINDINGS OF FACT

The record contains a letter entitled “Notice of Expulsion Hearing,” dated May 12, 2022, from the directing principal of R.E.A.L School in the Racine Unified School District. The letter advised that a hearing would be held before an independent hearing officer on May 24, 2022 that could result in the pupil’s expulsion from the Racine Unified School District through her 21st

birthday. The letter was sent separately to the pupil and her mother. 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 Friday, May 6, the pupil was intoxicated at school and drank alcohol and puffed on a vape in front of a teacher in the fieldhouse bathroom. At the pupil's mother's request at the beginning of the May 24, 2022 hearing, the hearing was rescheduled for May 26, 2022 in order to allow the pupil's mother to review the administration's documents. A second notice of expulsion hearing, dated May 24, 2022, was sent by email to the pupil and her mother stating that the hearing would be held on May 26, 2022.

The hearing was held in closed session before an independent hearing officer on May 26, 2022. The pupil's mother appeared at the hearing with an advocate. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's mother and advocate 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 in school which endangered the property, health and safety of others by using and possessing alcohol and puffing a vape at school. The hearing officer further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of fact of the hearing officer, dated May 26, 2022, was mailed separately to the pupil and her mother. The order stated the pupil was expelled through through the end of the 2022-2023 school year with an opportunity for conditional reinstatement as determined by her individualized educational plan (IEP) and on the condition that she not be in possession or use of any illegal substances. The decision of the

independent hearing officer was reviewed and affirmed by the school board on June 6, 2022. An audio recording of the expulsion hearing is 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.

The appeal letter in this case raises several issues which require consideration. First, appellant disagrees with the district’s determination that the pupil’s behavior was not a manifestation of her disability. The state superintendent has consistently held that an expulsion appeal is not the appropriate context within which to challenge a school district’s application of special education provisions to a particular student. *Sch. Dist. of Onalaska Bd. of Educ.*, Decision and Order No. 799 (Nov. 5, 2020); *Middleton-Cross Plains Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 794 (June 26, 2020); *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (January 30, 2014). Specifically, the state superintendent does not have authority in an expulsion appeal to examine the appropriateness of a manifestation team determination. *Sch. Dist. of Onalaska Bd. of Educ.*, Decision and Order No. 799 (Nov. 5, 2020); *C.D. v. Pardeeville Sch. Dist. Bd. of Educ.*, Decision and Order No. 715 (Feb. 7, 2014); *Brian M. v. Lodi Sch. Dist. Bd. of Educ.*, Decision and Order No. 425 (Oct. 23, 2000). The pupil may challenge the district’s determination that her misconduct was not a manifestation of her

disability using the special education due process appeal procedures in subchapter V of chapter 15 of the Wisconsin Statutes and chapter PI 11 of the Wisconsin Administrative Code. *Matthew C.M. v. Cedarburg Sch. Dist. Bd. of Educ.*, Decision and Order No. 274 (Feb. 14, 1996).

Appellant states that she has already filed such a complaint.

Appellant makes additional arguments related to the pupil's special education services and supports. She complains that during the pupil's "time home from school" – presumably referring to the pupil's suspension and expulsion – no services and supports were implemented. She complains that prior to the incident that resulted in the pupil's expulsion, the school delayed revising a functional behavior assessment and behavior intervention plan, which was finally conducted on April 8, 2022. Appellant complains that the behavior intervention plan was not executed, but notes that that failure was the result of an extended spring recess taken by the pupil. Finally, appellant alleges that "Information Update Bulletin 06.02 [] states for the purposes of the discipline requirements of special education law, alcohol and tobacco are not illegal drugs or controlled substances." These complaints all relate to the district's application of special education law and are not appropriate to consider in an expulsion appeal.

Appellant makes one argument that is unrelated to special education, contending that hearing officer Gayle Titus had a conflict of interest because she is the mother of Andrea Rittgers, the district's Chief of Schools, and the Chief of Schools reviews the principal's recommendation to expel.¹ Appellant contends that the expulsion hearing "appeared to be prejudged," that Ms. Rittgers is the person in charge of approving expulsions and that during the hearing, the hearing officer told appellant and her advocate that they could not bring up previous or past information but allowed district staff to enter past information. The district did not file a

brief or otherwise respond to the allegations; therefore, for purposes of this appeal, I will assume that the appellant's allegation as to the family relationship between Ms. Titus and Ms. Rittgers is correct. It is settled law that due process requires a fair and impartial decision-maker. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970). If a decision-maker is not fair or is not impartial, due process is violated. *Guthrie v. Wis. Empl't Relations Comm'n*, 111 Wis. 2d 447, 454, 331 N.W.2d 331, 335 (1983). At the same time, "[t]here is a presumption that public officials discharge their duties or perform acts required by law in accordance with the law and the authority conferred upon them, and that they act fairly, impartially, and in good faith." *State ex rel. Wasilewski v. Bd. of Sch. Dirs. of City of Milwaukee*, 14 Wis. 2d 243, 266, 111 N.W.2d 198, 211 (1961). *See also Heine v. Chiropractic Examining Bd.*, 167 Wis. 2d 187, 194 n.3, 481 N.W.2d 638, 641 n.3 (Ct. App. 1992) (citing *Wasilewski*); *Buker v. Labor & Indus. Review Comm'n*, 2002 WI App. 216, ¶ 19, 257 Wis. 2d 255, 650 N.W.2d 864 ("There is a presumption of honesty and integrity in those serving as adjudicators in state administrative proceedings.").

The record contains letters dated May 26, 2022 from Andrea Rittgers, Director of Student Services, to the pupil and her mother enclosing the expulsion order issued by the hearing officer and stating that the school board would review the order within thirty days. Despite appellant's assertions, the record contains no evidence that Ms. Rittgers was involved in the decision to seek the pupil's expulsion or that she approved the expulsion. For example, the notice of expulsion hearing was signed by the directing principal of the school and not by Ms. Rittgers, who, according to the May 26, 2022 letter, works for the district's Office of Student Services.

Appellant is correct that the hearing officer did not allow appellant to retry the manifestation determination at the expulsion hearing or to introduce information about IEP meetings held prior

¹ Letters from Andrea Rittgers that are part of the record describe Ms. Rittgers' title as Director of Student Services, not Chief of Schools. The district's website indicates that Ms. Rittgers is a member of the Chief of Schools

to the incident but did allow the district to introduce information regarding the pupil's past behaviors, attendance record and grades. This difference in admission of evidence about "previous or past information" by the parties is not evidence of bias. The expulsion hearing was not the proper setting to challenge the manifestation determination or IEP and the district notified the pupil in the notice of expulsion hearing that the hearing officer and school board might consider the pupil's complete disciplinary and academic records if the misconduct was proven. The pupil did not contest that she was intoxicated at school or that she drank alcohol or vaped at school, nor did she contest that this was her second offense. Rather than dispute the factual allegations, appellant argued at the hearing that the pupil's conduct was a coping mechanism related to her disability and that expulsion was not in the pupil's best interest. However, the school board is not required to consider the best interest of the pupil before determining that the interest of the school demands expulsion. The record supports the finding that the pupil's conduct met the standard for expulsion under Wisconsin law; this is not a case in which a hearing examiner's finding regarding the underlying facts may have been influenced by bias. Best practice when there is a possible conflict of interest would be for the hearing officer to recuse herself from the case to avoid any appearance of conflict or to disclose the potential conflict on the record so that the pupil has the opportunity to explore the relevant facts. In this case, I find the appellant's assertion of bias insufficient to overcome the presumption that the hearing officer was impartial.

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

department. See <https://rusd.org/departments/chief-schools/contact-chief-schools>.

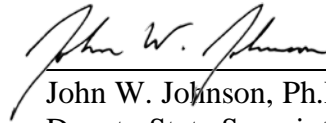
CONCLUSIONS OF LAW

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 Racine Unified School District Board of Education is affirmed.

Dated this 12th day of September, 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]
[REDACTED]

Eric Gallien
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COPIES MAILED TO:

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