

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Stone Bank School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-15

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 Stone Bank School District Board of Education to expel the above-named pupil from the Stone Bank School District. This appeal was filed by the pupil's father and received by the Department of Public Instruction on October 10, 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 August 16, 2022, from the district administrator of the Stone Bank School District. The letter advised that a hearing would be held on August 24, 2022 that could result in the pupil's expulsion from the Stone Bank School District through his 21st birthday. The letter was sent separately to the pupil, his father and his mother by certified mail. The letter alleged that the pupil was guilty of repeated

refusal or neglect to obey the rules and that he 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 letter specifically alleged that on January 26, 2022, the pupil served an in-school suspension for shoving a classmate and calling her “a bitch” and that on June 7, 2022, it was determined that the pupil violated the district’s Title IX sexual harassment policy by hugging a student from behind and making contact with her chest at a basketball game that occurred between January 26 and February 15, and by grabbing the same student in the genital area in art class on or around April 12 or 19 when she was picking up a pile of art supplies she had dropped.

The hearing was held in closed session on August 24, 2022. The pupil and his parents did not appear at the hearing. No representative of the pupil appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the school board deliberated in closed session. The board found that the pupil was guilty of repeated refusal or neglect to obey the rules and 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 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 August 29, 2022, was mailed separately to the pupil, his father and his mother. The order stated the pupil was expelled through through August 31, 2025, with eligibility for conditional reinstatement as of September 1, 2023 upon satisfaction of certain conditions. Minutes of the school board 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) – 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 one issue. Appellant contends that he “was never notified that my son was being expelled and never was noticed that there was going to be a hearing to discuss him being expelled.” Wis. Stat. § 120.13(1)(c)4. requires that written notice of the expulsion hearing be sent to the pupil and a minor pupil’s parents not less than five days prior to the hearing. The statute does not require that the notice be received, and a parent or student cannot prevent an expulsion hearing from taking place by refusing to accept notice or refusing to accept certified mail. *Daniel C. v. Whitewater Sch. Dist. Bd. of Educ.*, Decision and Order No. 503 (Dec. 19, 2003). The record supports the conclusion that appellant knew of the expulsion hearing and actively refused to accept the written notices that were sent to him using the United States Postal Service and/or to provide his current mailing address to the district. Thus, this is not a situation where constitutional due process requires reversal. *Cf. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019) (reversing where pupil and mother received one hour oral notice of hearing because postal service failed to deliver properly addressed notices and mother objected to lack of notice at the hearing).

The district issued three notices of expulsion hearing, dated June 28, 2022, July 25, 2022 and August 16, 2022, for three separate hearing dates as it attempted to obtain a current address from appellant. Each of the three notices was sent separately by certified mail to the pupil, to appellant and to the pupil's mother; the July 25, 2022 and August 16, 2022 notices were also sent by first-class mail to the pupil and to appellant. The record indicates that the certified mailing sent to the pupil's mother, at a different address, was received. All of the mailings to the pupil and to appellant were returned to the district with a postal service label stating "RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." On June 20, 2022, the district emailed appellant to ask him to provide his "new address"; appellant responded by email the same day, saying "same address as you have on file, [street name]." During a phone call with appellant on July 5, 2022, district staff asked appellant whether they could hand-deliver the notice and were told no. District staff asked appellant whether he was refusing to accept notice and he said yes. On August 11, 2022, when the pupil and appellant failed to appear at the expulsion hearing that had been noticed for that day, the board decided not to proceed so that the district could make additional attempts to contact the pupil and appellant regarding their whereabouts to ensure that they had received notice of the expulsion hearing. On August 11, 2022, the district secretary emailed appellant: "We have attempted to provide you with a Notice. Please provide us with your current mailing address." Appellant replied by email the next day, Friday, August 12, 2022:

Tell your coward principal to stop sending a woman to do a man's job, tell him he can completely kiss my white ass and I could care less what anyone from your school has to say I think absolutely everyone in the [S]tone Bank school system should be ashamed of themselves and they're a complete joke and embarrassment to society, go polish your Range Rovers and enjoy yourself out on your private Lake.

Two minutes later, appellant sent another email:

I've tried to call and leave 10 to 15 messages I could care less about a letter or anything to your hidden premeditated agenda I see through it all since the beginning all the principal needed to do is keep in communication with me like he said he was going to put all these used to doing is walking kindergarteners down to their class, to be completely honest with you instead of being a principal he should probably run a McDonald's even though I think he'd have a problem with that he doesn't seem very competent, don't waste your time sending me an email anymore I could care less about your school you guys are a joke I thought you were completely different.

One minute later, appellant sent another email: "Last message here's my new address [emoji with a middle finger pointing up]." On Tuesday, August 16, 2022, the district sent an email attaching notices of expulsion hearing addressed to the pupil and to appellant to the same email address from which appellant sent the three emails on August 12, 2022. Those notices were also sent separately to the pupil, appellant and the pupil's mother by certified mail on August 16, 2022, and to the pupil and appellant by first-class mail.

The record thus confirms that the district met the statutory requirement of sending written notice: the notice of expulsion hearing was sent separately by certified mail and first-class mail on August 16, 2022, to the pupil, appellant (the pupil's father) and the pupil's mother at their last known addresses. The hearing notice was also sent by email to appellant the same day to an email address from which he had communicated with the district four days earlier and was the email address from which he filed this appeal. The record shows that the district made significant effort to provide appellant and the pupil with the notice of expulsion hearing and that appellant actively refused to accept service of the notice by mail. The district complied with both statutory and constitutional notice requirements in this case.

The record contains evidence that the order of expulsion was sent separately by mail to the pupil, to appellant and to the pupil's mother. The order was also sent to appellant by email. Therefore, the district complied with the statutory requirement to "mail a copy of the [expulsion]

order to the pupil and, if the pupil is a minor, the pupil's parent or guardian." Wis. Stat. § 120.13(1)(c)3.

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

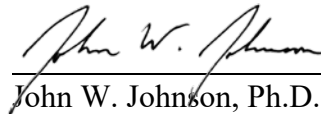
CONCLUSIONS OF LAW

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 Stone Bank School District Board of Education is affirmed.

Dated this 21st day of November, 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]

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