

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Randolph School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-18

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 Randolph School District Board of Education to expel the above-named pupil from the Randolph School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 27, 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 October 12, 2022, from the district administrator of the Randolph School District. The letter advised that a hearing would be held on October 17, 2022 that could result in the pupil’s expulsion from the Randolph School District through their 21st birthday. The letter was sent separately to the pupil and their parents by certified mail. The letter alleged that the pupil (1) engaged in conduct while

at school or while under the supervision of school authority which endangered the property, health, or safety of others; and (2) while not at school or while not under the supervision of a school authority, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter stated the expulsion proceeding is based upon the pupil's "alleged acts which includes the facts [they] made to physically harm students of Randolph High School." The letter specifically alleged that at approximately 8 p.m. on Sunday, October 9, 2022 off school grounds, "a verbal threat was made, in a calm, sincere manner, 'To put all the people [they] hated into one room to shoot them up so no one else would get hurt.'" The letter alleged that the pupil made this threat in confidence to another student using FaceTime. The letter further alleged that on Monday, October 10, 2022, at approximately 8:05 a.m., the Randolph High School principal detained the pupil in the counselor's office, during which time the pupil "admitted to the statement, [their] feelings about hurting other students and [themselves], as well as having access to guns."

The hearing was held in closed session on October 17, 2022. The pupil's parents appeared at the hearing without counsel.¹ At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's 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 while not at school or while not under the supervision of a school authority, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority and that the pupil engaged in conduct while at school or while

¹ The school board's Closed Session Meeting Minutes contained in the record do not list the pupil as in attendance. However, the minutes refer to "Cross-examination by student/family," "Student/family presents case" and "Rebuttal of Recommendation by student/family." The pupil has not suggested that they did not have an opportunity to attend the expulsion hearing and the pupil's presence or absence is irrelevant to this decision on appeal.

under the supervision of a school authority which endangered the property, health, or safety of others. The school board further found that the interest of the school demands the pupil's expulsion. The order of pupil expulsion containing the findings of the school board, dated October 17, 2022, was mailed separately to the pupil and their parents. The order stated the pupil was expelled until their 21st birthday. Minutes of the school board 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 three issues which require consideration. First, the pupil contends that they were not guilty of any offense that violated rules in the student handbook because the rules in the handbook only apply to conduct on school property and the pupil did not break any rules at school. The statutory bases for the pupil's expulsion do not require the board to find that the pupil violated the school handbook. To the extent that the pupil is contending that they did not “engage[] in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others,” Wis. Stat. § 120.13(1)(c)1., even if I concluded that the board could not reasonably have found that the pupil engaged in such conduct, that would not result in reversal of the expulsion. The

board appears to be relying on the fact that the pupil admitted at school to making the threat to support its finding that the pupil engaged in conduct “while at school” that endangered others. The idea that a student’s admission during an interview at school of statements made at home is sufficient to support expulsion for misconduct at school is not convincing. However, even if I found that the record contained no reasonable basis for the board’s finding that the pupil engaged in expellable conduct while at school, threatening to shoot students is conduct which the board could reasonably conclude “endangered the property, health or safety of others at school or under the supervision of a school authority.” Wis. Stat. § 120.13(1)(c)1. The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *Travis J.M. v. Deerfield Cmty. Sch. Dist. Bd. of Educ.*, Decision and Order No. 423 (Sep. 25, 2000). Where the notice of expulsion hearing states multiple statutory bases for expulsion, it is sufficient where, as here, one of those bases is supported by evidence in the record and reflected in the board findings.

Second, the pupil states that they were “not in the right state of mind to think rationally.” The pupil contends, “I never actually did anything directly wrong. I just became emaciated under my own thoughts.” The pupil does not deny making the alleged threat. The state superintendent has the authority to “approve, reverse, or modify” the school board’s decision. Wis. Stat. § 120.13(1)(c)3. However, because the school board is in the best position to know and understand what its community requires as a response to school misconduct, the state superintendent has historically chosen not to second-guess the appropriateness of a school board’s determination. *See, e.g., Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Madison*

Metro. Sch. Dist. Bd. of Educ., Decision and Order No. 786 (Nov. 7, 2019). I see no circumstance here that would prompt me to overrule the determination of the board that expulsion is an appropriate response to the pupil’s actions.

Finally, the pupil contends that the school failed to follow its “zero tolerance policy” for harassment, bullying and hate speech and its non-discrimination policy, which “prohibits discrimination or harassment based on transgender status including gender expression, gender identity and gender non-conformity.” Although such allegations are concerning, an expulsion appeal is not the proper venue for addressing any unlawful discrimination that may have occurred. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022).

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

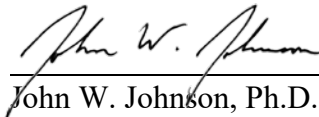
CONCLUSIONS OF LAW

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 Randolph School District Board of Education is affirmed.

Dated this 18th day of January, 2023



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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District Administrator
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COPIES MAILED TO:

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