

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Siren School District
Board of Education

DECISION AND ORDER

Appeal No.: 22-EX-19

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 Siren School District Board of Education to expel the above-named pupil from the Siren School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on December 9, 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 November 10, 2022, from the Siren Middle/High School principal. The letter advised that a hearing would be held on November 16, 2022 that could result in the pupil’s expulsion from the Siren School District through his 21st birthday. The letter was sent separately to the pupil, his mother and his father 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 November 2nd, 2022 [the pupil] told a staff member that he was going to “off” some of the kids in his gym class. The teacher asked [the pupil] to explain what he meant by that. [The pupil] responded “yes”. The teacher explained to [the pupil] that when he hears someone say they are going to “off” someone that means to kill. [The pupil] responded again yes. The teacher brought [the pupil] to the High School Principal’s office where again [the pupil] confirmed that he did say he was going to “off” some of his classmates. [The pupil] expanded that he was feeling targeted and bullied by some of the other students. [The pupil] was upset and made the comment that he was just done. Law enforcement and parents were notified and [the pupil] was questioned by Chief Trevor Thiex. [The pupil] admitted making the comment to law enforcement. When Chief Trevor Thiex asked [the pupil] if he had access to weapons or guns [the pupil] said yes, he has a deer rifle in his closet in his room at home. Chief Trevor Thiex felt this was a credible threat and made a referral to Health and Human Services for juvenile charges of Terroristic Threats.

The hearing was held in closed session on November 16, 2022. The pupil, his mother and three family friends appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother 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 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 findings of fact and expulsion order of the school board, dated November 16, 2022, was mailed separately to the pupil, his mother and his father. The order stated the pupil was expelled through his 21st birthday, with eligibility for early reinstatement on January 17, 2023, the first day of the second semester of the 2022-2023 school year, if certain conditions were met. Minutes 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 two issues which requires consideration. Appellant contends that the district failed to provide due process to the pupil and appellant by denying them access to the full threat assessment created by the school. Appellant states that she requested the threat assessment under Wis. Stat. § 118.125(1)(a) but was denied access. Appellant contends that having the report would have given her information regarding witnesses she might subpoena to testify in the pupil’s defense. The district responds that it provided appellant a summary document of the team findings regarding the threat assessment during the expulsion hearing. The district states that the threat assessment is part of a Department of Justice grant and research project, is a process used to determine an appropriate course of action and is largely discussion based. When completed, the documents are not added to a student file but are reported anonymously to the Department of Justice. The Department of Justice told the district that the Department of Justice did not feel that the district needed to provide the completed interview forms to the parent, but that the district should instead provide a summary of the findings, which the district did.

Appellant's allegations do not support a violation of due process. The full threat assessment that appellant requested and did not receive was not introduced as an exhibit at the expulsion hearing and was not reviewed by the board in rendering the expulsion decision. The record indicates that all hearing exhibits were shared with appellant and appellant has not alleged that the board considered any documents that were not shared with her. An expulsion appeal is not the proper setting to consider an allegation that a district failed to comply with Wis. Stat. § 118.125, the pupil records statute.

Second, appellant contends that the district relied on "partial hearsay." Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334, 340 (Ct. App. 1982); *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022). At the expulsion hearing, the principal and the Siren police chief both testified that the pupil told them that he said he intended to "off" other pupils and that when the pupil said "off," he meant to kill. This was not hearsay. Wis. Stat. § 908.01(4)(b)1. The pupil does not deny making the 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.

Two additional issues merit mention. Among other things, the notice of expulsion hearing must state “the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.” Wis. Stat. § 120.13(1)(e)4.a. “[A] student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard.” *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). This entails providing detailed information about the conduct, not simple generalizations. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *Eric Paul H. by Mischicot Sch. Dist. Bd. of Educ.*, Decision and Order No. 459 (Mar. 11, 2002). The purpose of this notice is to allow a student to adequately prepare for the expulsion hearing. *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 25, 2022); *Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 797 (July 28, 2020); *A.S. v. Milwaukee Public Sch. Dist. Bd. of Educ.*, Decision and Order No. 674 (Dec. 21, 2010).

In the present case, the notice does not name or otherwise identify the teacher to whom the pupil said he was going to “off” some of his classmates. If the notice had not identified two additional individuals to whom the pupil repeated or confirmed the statement, the notice may have been inadequate and grounds for reversal of the expulsion for failing to include the particulars of the alleged misconduct. *See, e.g., Janesville Sch. Dist. Bd. of Educ.*, Decision and Order No. 817 (Aug. 25, 2022) (reversing expulsion based on inadequate notice where notice failed to describe how many staff pupil attacked or name the staff who were attacked). However, because the notice specified that the pupil also made the statement to the principal and to Chief Trevor Thieux, the notice contained adequate particulars to support the expulsion. The better practice, however, would be for the district to name any staff described in a notice of expulsion

hearing, or, at a minimum, to describe the teacher in a way that clearly identifies the teacher, such as “the pupil’s gym teacher” (if the pupil only has one gym teacher).

Finally, at the beginning of the expulsion hearing, the school board president told that pupil that “You and your parent or advocate may ask questions or cross-examine the witnesses after the school administration is finished asking questions.” Despite this, the school board president refused to let the pupil’s mother question the pupil’s witness when the pupil became agitated and appeared close to tears, telling the pupil’s mother, “He really needs to ask the questions himself.” This was not appropriate. The pupil was 14 years old and the pupil’s mother had a right to question witnesses. The district is cautioned to ensure that parents of minor pupils are allowed full authority to question witnesses at future expulsion hearings. In this case, the pupil managed to complete the examination of his witness and the pupil’s mother engaged in extensive questioning of administration witnesses and provided additional testimony and mitigating argument. Therefore, I will not reverse the expulsion for the refusal to allow the pupil’s mother to complete the witness examination.

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

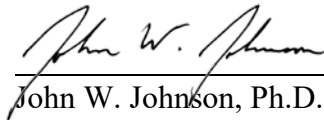
CONCLUSIONS OF LAW

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 Siren School District Board of Education is affirmed.

Dated this 2nd day of February, 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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COPIES MAILED TO:

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