Decision and Order No.: 828

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by Niagara School District Board of Education	DECISION AND ORDER Appeal No.: 23-EX-02

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 Niagara School District Board of Education to expel the above-named pupil from the Niagara School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on February 22, 2023.

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 January 17, 2023, from the district administrator of the Niagara School District. The letter advised that a hearing would be held on January 25, 2023 that could result in the pupil's expulsion from the Niagara School District through his 21st birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct at school or

while under the supervision of school authorities that endangered the property, health, or safety of others. The letter specifically alleged that:

1. On Thursday, December 19, 2022 at approximately 4:20 p.m. [the pupil] was in the entrance to the high school gymnasium area when he was in possession of a knife with an approximately 4 inch blade and that, while in a conversation with other students, he pulled out the knife and opened the knife so as to expose the blade and threaten other students present at the time.

2. [The pupil] was in possession of a knife, with an approximately 4 inch blade, that he used to threaten a student in the boys locker room at the high school. The night of December 12th, 2022 during a boys basketball game, while sitting in the bleachers, [the pupil] had a bloody nose and began to wipe the blood on a student sitting in front of him. The student tried stopping [the pupil] from wiping the blood on his shirt which turned into a bit of a dispute. 1-2 days following the basketball game held on December 12, 2022, placing this event on or about either December 13, 2022 or December 14, 2022 after the end of the school day, in the boys locker room, [the pupil] specifically told the one student who had tried stopping [the pupil] from wiping the blood on him, "I told you I was going to do something." while showing the student his knife and blade.

3. On the same day and shortly following the incident described in Item 2, above, [the pupil] used the same knife to threaten another student by placing the knife up to the student's neck before removing it and departing the area without causing the other student any physical harm.

The hearing was held in closed session on January 25, 2023. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his 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 engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. Specifically, the school board found that the evidence supported the allegations in counts 1 and 2, and that there was insufficient evidence to support the allegations in count 3. 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 January 30, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through age of 21, unless modified by separate action of the board. 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.

Appellant raises several issues which require consideration. First, appellant requests that the pupil's expulsion period be decreased to one year "so he is able to get the proper education he needs and experience high school to the fullest." 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 held that it would be inappropriate 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

extraordinary circumstance here that would prompt me to overrule the determination of the board regarding the expulsion period. The pupil, a ninth grader, admits that he pulled out a knife and showed it to another student, saying "do you want to fight now?" and, on a separate occasion, took the knife out in the locker room. Although the board could have chosen not to expel the pupil, it was not unreasonable for the board to expel him or to expel him until age 21. A school district has the discretion to offer alternative education. The Department of Public Instruction encourages districts to provide alternative education to expelled students, but such a program is not required. *D.R. v. Milwaukee Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No.700 (Dec. 19, 2012); *Matt L. v. Merrill Area Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No. 381 (May 19, 1999). In the present case, the pupil was open enrolled in the district and has requested, post-expulsion, that his district of residence accept his enrollment.

Second, appellant contends that they did not have sufficient time to obtain counsel before the expulsion hearing, noting that the notice of expulsion hearing was mailed January 19, 2023, and the hearing was January 25, 2023. In order for an expulsion notice to be timely, it must be sent no less than five days before the hearing. Wis. Stat. § 120.13(1)(c)(4). The notice in this case met that requirement. Appellant did not ask for the hearing to be postponed in order to seek counsel nor did she raise any extenuating circumstance at the hearing to suggest that the notice was insufficient to comply with due process in this particular case.

Third, appellant states that despite making a request for videos or photos to be sent by email so that the pupil's parents could verify that the pupil had the knife that he said he had, they did not receive videos or photos by email prior to the hearing. There is no requirement that the district provide copies of hearing exhibits to the pupil and his parents before the hearing. The district is only required to share all exhibits presented to the board with the pupil and his parents

at the hearing. *B.S. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 626 (July 11, 2008). Similarly, there is no requirement for exhibits to be shared with a pupil's attorney, if he has one, prior to an expulsion hearing. In this case, appellant concedes that they were able to view the video footage and documents during the hearing. Additional time to gather thoughts or to question the pupil about the footage outside the earshot of the board could have been accommodated at the hearing through a request for a recess. There was no error in failing to share the video prior to the hearing.

Fourth, appellant contends that the pupil "was simply being a dumb teenage boy that was not on his ADHD medications at the time and made a poor choice thinking he was being funny." Appellant also states that she has reached out to the pupil's district of residence regarding special education services and has yet to hear back from that district. Appellant does not suggest that the pupil was identified as a student with a disability at the time of the expulsion hearing and the record contains no information to that effect. 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. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (January 30, 2014). Such challenges are beyond the scope of the state superintendent's review when there is no evidence in the record that the student was identified as a child with a disability. *Middleton-Cross Plains Area School District Board of Education*, Decision and Order No. 794 (Jun. 26, 2020); *S.R. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 723 (February 25, 2015).

Fifth, appellant submits information not provided to the board regarding the county's evaluation of the pupil's risk of reoffending and the alleged date of incident 2. The expulsion hearing was the pupil's opportunity to challenge the evidence presented by the district and to present any additional evidence that the pupil or appellant wanted the board to consider. New evidence may not be submitted for the first time on appeal. *Loyal Sch. Dist. Bd. of Educ.*, Decision and Order No. 822 (Dec. 6, 2022); *K.F. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 739 (Aug. 2, 2016). Similarly, the expulsion hearing was the pupil and appellant's opportunity to argue to the board as to what the video showed. The record shows that the pupil and his parents had the opportunity at the expulsion hearing to challenge the administration's presentation and to address the board. That the board chose not to provide the pupil a "second chance" does not mean that the board failed to consider appellant's arguments. Indeed, the board dismissed Count 3, finding that "[t]here is insufficient evidence to support the allegation that [the pupil] placed the knife to the throat of one of the students in the locker room."

Finally, in her reply brief, appellant suggests that the board may have been biased and that because Niagara is a small town "people tend to have a preconceived opinion about someone even if they don't know them personally." Appellant provides no specific information to support her contention of bias. As public officials, school board members are presumed to act in accordance with the duties of their office and act fairly, impartially, and in good faith. *See State ex rel. Wasilewski v. Bd. of Sch. Directors,* 14 Wis. 2d 243, 266, 111 N.W.2d 198, 211 (1961); *Ripon Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 826 (Feb. 14, 2023); *Goodman-Armstrong Creek Sch. Dist. Bd. of Educ.*, Decision and Order No. 787 (Dec. 16, 2019). The record does not contain and appellant has not provided any evidence to rebut this presumption.

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 Niagara School District Board of Education is affirmed.

Dated this 17th day of April, 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]

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