

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Altoona School District
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-05

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 Altoona School District Board of Education to expel the above-named pupil from the Altoona School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on April 10, 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 Pupil Expulsion Hearing,” dated March 3, 2023, from the principal of Altoona High School. The letter advised that a hearing would be held on March 9, 2023 that could result in the pupil’s expulsion from the Altoona 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 endangered the property, health, or safety of

others at school or under the supervision of a school authority. The letter specifically alleged that:

On or about February 22, 2023, [the pupil] used his cell phone to take a picture of another student, from behind the student, while the student was using a urinal in a high school bathroom and while his pants were down. Immediately thereafter, [the pupil] distributed the picture via Snapchat to five other students. When questioned by school authorities, [the pupil] admitted to taking the picture of the student without the student's consent and sending the picture to other students via Snapchat.

The hearing was held in closed session on March 9, 2023. The pupil, his parents and his grandmother 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 at school and/or under the supervision of a school authority. 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 March 13, 2023, was mailed separately to the pupil, his mother and his father. The order stated the pupil was expelled through his 21st birthday. The order also provided that the pupil could request that the board expunge his record of expulsion by submitting an application to the district administration. 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 several issues which require consideration. First, appellant raises four issues related to special education. Appellant disagrees with the district's manifestation determination. Appellant complains that the district failed to provide necessary modifications under the pupil's Section 504 plan for the last few years and contends that if the district had provided those modifications, it is unlikely the incident the pupil was expelled for would have happened. Appellant states that the pupil is a child with a disability and the district did not provide him a free appropriate public education. Finally, appellant contends that the district failed to test the pupil to determine if he has a learning disability in reading, despite his low test scores for an extended length of time. 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. *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Middleton-Cross Plains Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 794 (June 26, 2020). Such a challenge is beyond the scope of Wis. Stat. § 120.13(1)(c). *Ryan S. v. Barron Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 417 (June 9, 2000). Any challenges to the district's special education procedures may be addressed using special education appeal procedures.

Second, appellant complains that although the notice of pupil expulsion hearing described a single incident, the district told the board about previous behavioral infractions by the pupil, which “tainted the school board’s opinion.” The pupil records law, Wis. Stat. § 118.125, permits the use of a pupil’s record in connection with the suspension or expulsion of the pupil. If the school board provides notice to the pupil that their records may be used, then the board may use the records to determine the punishment. *L.P. v. Whitewater Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 351 (Mar. 31, 1998). In this case, the notice of pupil expulsion hearing stated, “PLEASE TAKE FURTHER NOTICE that if any of the allegations made above are proven, in considering whether to expel the pupil, and if so, for what period of time, the Board may consider the pupil’s complete disciplinary and academic records. These records are available for your review as outlined in Section 118.125 of the Wisconsin Statutes.” Because the district provided notice that the pupil’s complete disciplinary and academic records might be considered by the board, it was not inappropriate for the district to provide that information to the board.

Third, appellant contends that the pupil and his parents were not told that they could have legal representation and they did not realize there would be an attorney representing the school district at the expulsion hearing. However, the notice of pupil expulsion hearing stated, “The above-named pupil, if a minor, and/or the pupil’s parent(s) or guardian(s) may be represented at the hearing by counsel and may also present evidence, cross-examine witnesses, and review and obtain copies of evidentiary materials.” This met the requirement of Wis. Stat. § 120.13(1)(c)4.e. (“The notice shall state all of the following: ... That the pupil and, if the pupil is a minor, the pupil’s parent or guardian may be represented at the hearing by counsel.”). No further or oral notice that the pupil or his parents could be represented by counsel was required. There is no

requirement that the notice of expulsion hearing state that the school board or district may be represented by an attorney at the hearing.

Finally, appellant notes that although the administration recommended expulsion with the possibility of early reinstatement for the 2023-2024 school year if the pupil met certain conditions, the school board voted to expel the pupil until age 21 without adopting the administration's recommendation for early reinstatement. Appellant contends that "[t]his is an unusually harsh and cruel punishment to inflict on a teenager" and that it "will have lasting negative ramifications for him." 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). The school board is not required to adopt the administration's recommendation. I note that although the board chose not to adopt the explicit early reinstatement conditions proposed by the district administration, the board did note that the pupil "may request that the Board expunge his record of expulsion by submitting an application to the District Administration. Upon the Administration's acceptance and approval of the application, the Board will consider the expungement of [the pupil]'s record of expulsion." Thus, although it was not required to do so, the board provided a procedure by which the pupil could seek expungement of his expulsion, which would allow his return to school in the district.

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

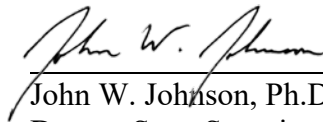
CONCLUSIONS OF LAW

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 Altoona School District Board of Education is affirmed.

Dated this 7th day of June, 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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