

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Pulaski Community School District
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-07

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 Pulaski Community School District Board of Education to expel the above-named pupil from the Pulaski Community School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on May 12, 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 April 3, 2023, from the district administrator of the Pulaski Community School District. The letter advised that a hearing would be held on April 17, 2023 that could result in the pupil’s expulsion from the Pulaski Community 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 and under the supervision of school authorities which endangered the property, health, or safety of others. The letter specifically alleged that:

On March 29, 2023, at approximately 9:30 a.m. [the pupil] was at Pulaski High School and was found to be in possession of prohibited substances, including two THC cartridges, and distributed them for use by three other students while at Pulaski High School. [He] also had in [his] possession three different types of medicine (8 Acetaminophen pills, 5 Venlafaxine ER 37.5 MG pills, and approximately 20 Lactase Enzyme pills). All medications were without a label with two being over-the-counter medications (Acetaminophen and Lactase Enzyme) and the third being prescribed (Venlafaxine).

The hearing was held in closed session on April 17, 2023. The pupil and his mother 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 and while under the supervision of a school authority which endangered the property, health, or safety of others at school. 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 April 24, 2023, was mailed separately to the pupil, his mother and his father. The order stated the pupil was expelled until the age of 21. 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 six issues which require consideration. First, appellant states that she did not receive five days' advance written notice of the hearing and that "[t]he only way I knew when the meeting with the school board was that I was sent a copy via email the day of the meeting." In its response to the appeal, the district states that its Director of Students Services Julie Harris called appellant on April 11, 2023 to confirm appellant's receipt of the expulsion notice because a week had passed since the district had sent the notice and the district had neither received returned notices nor received the return receipts from the certified mail. During that phone call, Mrs. Harris told appellant the date and time of the expulsion hearing. The record contains copies of the envelopes for the notices sent by certified mail to the pupil and to his mother that were returned to the district with the notation, "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD" on April 24, 2023, after the expulsion hearing. The record shows that the postal service left notices for the pupil and his mother on April 5, 2023, April 11, 2023, and April 20, 2023 before returning the notices to the district. The notice sent to the pupil's father, at a different address, was not returned to the district. The record also contains a separate letter dated April 3, 2023, apparently sent by regular mail, regarding the extension of the pupil's suspension that stated, "A notice of expulsion hearing based on the same conduct for which [the pupil] is presently suspended from the school has been sent on today's date, April 3, 2023." Because appellant had an opportunity to file a reply brief in which she could have contested these facts and did not, I accept as undisputed that appellant was aware by

at least April 11, 2023 that the district had sent her a notice of expulsion hearing and that the hearing would be held on April 17, 2023.

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. *Stone Bank Sch. Dist. Bd. of Educ.*, Decision and Order No. 821 (Nov. 21, 2022); *Daniel C. v. Whitewater Sch. Dist. Bd. of Educ.*, Decision and Order No. 503 (Dec. 19, 2003). Here, the record supports the conclusion that appellant knew of the expulsion hearing in a timely manner and failed to claim the written notice that was sent to her using the United States Postal Service. 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).

Second, appellant states that this was the pupil's first offense and contends the district did not follow its school policies when it expelled the student because the district's drug policies state that children should be given a chance to change. Whether the district followed its own policies regarding drug offenses is not for the state superintendent to review. I am not authorized to review, approve, or disapprove of school policy; I am only authorized to review expulsion decisions to ensure that the pupil was provided adequate procedural due process. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020); *N.K. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 620 (May 15, 2008).

Third, appellant contends that the pupil was not treated the same as other students in similar situations from schools around Wisconsin. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (June 2, 2022); *Sun Prairie Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 811 (May 26, 2022); *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022). As a general rule, and one that applies in this case, I do not have the authority to address issues of fairness and unevenness of disciplinary measures. *Muskego-Norway Sch. Dist. Bd. of Educ.*, Decision and Order No. 804 (June 28, 2021); *St. Croix Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 793 (May 15, 2020); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014).

Fourth, appellant complains that the pupil and appellant were not treated fairly or given the opportunity to defend themselves. She notes that the pupil has faced many adversities due to being transgender and should not also have to miss out on an education. The minutes of the expulsion hearing state that appellant was offered the opportunity to cross-examine the administration's witnesses, to present other evidence and to respond to the administration's recommendation. As discussed above, the district provided the required notice to appellant, who chose not to claim the notice from the post office. 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 extraordinary circumstance here that would prompt me to overrule the determination of the board that expulsion is an appropriate response to the pupil's actions.

Fifth, appellant complains that she has not received a response to her public records request to the district for records of other cases that involved drugs and how those cases were handled. I have no authority to enforce the public records laws. *See Wis. Stat. § 19.37.*

Sixth, appellant complains that the options that were given to her as a parent to continue the pupil's education were not options for them. 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. *Niagara Sch. Dist. Bd. of Educ.*, Decision and Order No. 828 (Apr. 17, 2023); *D.R. v. Milwaukee Pub. Sch. Dist. Bd. of Educ.*, Decision and Order No.700 (Dec. 19, 2012).

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

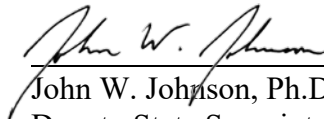
CONCLUSIONS OF LAW

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
Pulaski Community School District Board of Education is affirmed.

Dated this 11th day of July, 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]

Allison Space
District Administrator
Pulaski Community School District
143 W. Green Bay Street
Pulaski, WI 54162

COPIES MAILED TO:

[REDACTED]

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