

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Portage Community School District
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-11

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 Portage Community School District Board of Education to expel the above-named pupil from the Portage Community School District. This appeal was filed by the pupil’s mother, a county youth service coordinator and a county social worker and received by the Department of Public Instruction on May 30, 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 May 9, 2023, from an associate principal of Portage High School. The letter advised that a hearing would be held on May 15, 2023 that could result in the pupil’s expulsion from the Portage Community School District through her 21st birthday. The letter was sent separately to the pupil

and her mother by certified mail. The letter alleged that the pupil engaged in conduct while at school or while under the supervision of a school authority that endangered the property, health, or safety of others at school. The letter specifically alleged that:

- On Wednesday, May 3, 2023, at 12:35 PM, while on high school property inside the principal's office, the pupil struck School Resource Officer Katelyn Behling in the face with her open hand.
- During the immediate and subsequent search of the pupil on school grounds, a nicotine vape device was found in the left front pants pocket of the pupil.

The hearing was held in closed session on May 15, 2023. The pupil and her mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 did engage 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 interest of the school demands the pupil's expulsion. The order for expulsion containing the findings of the school board, dated May 15, 2023, was mailed separately to the pupil and her mother. The order stated the pupil was expelled until her 21st birthday. Minutes of the school board expulsion hearing and an audio recording of the 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 district demands the pupil's expulsion.

The appeal letter in this case raises one issue which requires consideration. Appellants state that they are appealing the expulsion because they believe the expulsion "will have a negative impact on [the pupil]'s overall ability to succeed." Appellants state that the pupil has not previously been in legal trouble in the school setting and that the incident was the pupil's first law enforcement referral since October 2021. Appellants state that getting the pupil to attend school took a lot of effort from her mother, informal supports, her therapist and the Columbia County Health and Human Service Department. Once the pupil began to attend school, it kept her out of trouble and out of the legal system. 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. 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. *River Valley Sch. Dist. Bd. of Educ.*,

Decision and Order No. 836 (July 21, 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 that 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 Portage Community School District Board of Education is affirmed.

Dated this 24th day of July, 2023



Thomas G. McCarthy
Executive Director of the Office of the 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]

Portage, WI 53901

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