

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-13

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 parents and received by the Department of Public Instruction on June 5, 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 28, 2022, from the principal of Bartels Middle School in the Portage Community School District. The letter advised that a hearing would be held on April 4, 2022 that could result in the pupil's expulsion from the Portage Community 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 while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that “[o]n Thursday, March 24, 2022, the pupil was in possession, consumed, and/or distributed to other students an intoxicating liquid while on school grounds (3rd Hour Math Class at Bartels Middle School).”

The hearing was held in closed session on April 4, 2022. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father 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 fact and conclusions of law of the school board, dated April 4, 2022, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until his 21st birthday, with an option for early reinstatement August 15, 2022 if the pupil met certain conditions during the term of the expulsion or any reinstatement. 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 district demands the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellants state that English is their family's second language and that they were never provided any information or documentation in their native language. Notably, appellants do not contend that they were unable to understand the notice or the expulsion hearing, despite English being their second language. The appeal is written in fluent English and the pupil and his father spoke fluent English at the expulsion hearing. At no point prior to the appeal, submitted over one year after the pupil's expulsion, did appellants suggest that they would have liked to have had documentation provided in their native language. In the present situation, where the pupil and family understand English and did not request a translation or an interpreter, there was no requirement that expulsion information be provided in the family's native language. Because there was no due process violation in failing to provide translated documents here, I need not determine in what situations an interpreter or translated notice may be required. However, I encourage school districts to translate expulsion notices and to provide interpreters if a district knows that a family or pupil has difficulty understanding English.

Second, appellants challenge the revocation of pupil's early reinstatement.¹ Appellants state that the pupil reads four years below grade level and was in math intervention and complain that nothing more was put in place to help him pass his classes despite the fact that the expulsion order said he needed to maintain passing grades. Essentially, appellants contend that the

¹ In the appeal letter, appellants state that the pupil was expelled on May 4, 2023, but the district's brief and an attachment to the appeal letter clarify that the pupil's early reinstatement was revoked on that date.

reinstatement conditions with respect to maintaining passing grades were impossible for the pupil to meet: “The school has failed to assist him and instead kicks him out so he can’t learn... My family does not have a computer for my son to use and we are not able to drive him to another school.” The state superintendent has no authority to review the revocation of early reinstatement. Wis. Stat. § 120.13(1)(h). Specifically:

If a pupil granted early reinstatement under subd. 3. violates an early reinstatement condition that the pupil was required to meet after his or her early reinstatement but before the expiration of the term of expulsion, the school district administrator or a principal or teacher designated by the school district administrator may revoke the pupil's early reinstatement.

Wis. Stat. § 120.13(1)(h)4.

Within 5 school days after the revocation of a pupil's early reinstatement under subd. 4., the pupil or, if the pupil is a minor, the pupil's parent or guardian may request a conference with the school district administrator or his or her designee, who shall be someone other than a principal, administrator or teacher in the pupil's school...If the school district administrator or his or her designee finds that the pupil violated an early reinstatement condition and that the revocation was appropriate, he or she shall mail separate copies of the decision to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The decision of the school district administrator or his or her designee is final.

Wis. Stat. § 120.13(1)(h)6. (emphasis added). Wisconsin statutes do not provide the pupil or his family a right to appeal the revocation of early reinstatement to the state superintendent.

Finally, appellants complain that the pupil just turned 14 years old and has been expelled until the age of 21. 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 25th 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]

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COPIES MAILED TO:

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