

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Augusta Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 23-EX-18

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 Augusta Area School District Board of Education to expel the above-named pupil from the Augusta Area School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on October 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 Expulsion Hearing,” dated February 3, 2023, from the district administrator of the Augusta Area School District. The letter advised that a hearing would be held on February 13, 2023 that could result in the pupil’s expulsion from the Augusta Area 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 by dropping a vape cartridge containing THC during class on February 1, 2023.

The hearing was held in closed session on February 13, 2023. The pupil and his parents did not attend the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. A letter from the pupil that had been submitted before the hearing was provided to the board members and discussed.

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 February 15, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the age of 21. 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 four issues which require consideration. First, appellant contends that she was misled on the importance of being at the expulsion hearing. She states that the principal said they did not need to attend the expulsion hearing and to have the pupil write a letter of apology that the principal would present at the hearing. If the principal said this, it would have been a correct statement: the pupil and his parents were not required to be at the hearing and a letter signed by the pupil was indeed presented at the hearing. Appellant complains that “it is all over repeatedly that we were notified of the meeting but chose not to be there.” Appellant does not dispute that she and the pupil received the notice of hearing and chose not to attend. Instead, the pupil chose to submit a letter for consideration by the board. When adequate notice is given, failure to appear at the expulsion hearing does not require another expulsion hearing or another opportunity to provide an explanation for pupil’s actions. *B.B. v. Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 619 (May 6, 2008). In this case, appellant and the pupil’s failure to attend the expulsion hearing, regardless the reason, is not grounds to reverse the expulsion.

Second, appellant states that she would like the pupil to be back in school and that the pupil needs to be in school because his mental health is suffering. The pupil does not deny possessing THC at school. 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). 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).

Third, appellant contends that other students who engaged in the same behavior and worse were able to return to school. 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).

Fourth, appellant states that she believes the pupil is being discriminated against. Appellant does not state the basis of the alleged discrimination (for example, the pupil's race, sex, religion or disability), nor does she allege that students of a different protected class who engaged in the same conduct as the pupil and had a similar behavior record were not expelled. Regardless, as noted above, 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). This does not minimize the seriousness of an allegation that a school

district is discriminating unlawfully. If the pupil believes he was discriminated against because of his membership in a protected class, he may follow the district's non-discrimination policy and procedure to file a complaint with the district. If he does so and receives a negative determination from the district, he may file an appeal under Wis. Stat. § 118.13(2)(b). *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).

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.

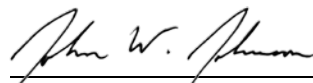
CONCLUSIONS OF LAW

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 Augusta Area School District Board of Education is affirmed.

Dated this 15th day of December, 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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