

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Board of Education of the
Unified School District of Antigo

DECISION AND ORDER

Appeal No.: 24-EX-01

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 Board of Education of the Unified School District of Antigo to expel the above-named pupil from the Unified School District of Antigo. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on January 11, 2024.

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 October 31, 2023, from the district administrator of the Unified School District of Antigo. The letter advised that a hearing would be held on November 9, 2023 that could result in the pupil’s expulsion from the Unified School District of Antigo through his 21st birthday. The letter was sent separately to the pupil and his mother. The letter alleged that the pupil knowingly conveyed or caused to be

conveyed a threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by means of explosives. The letter specifically alleged that:

On October 4, 2023, at 7:15 P.M., Antigo Middle School Principal, Heather McCann was sent an email addressed to her work email address, hmcann@antigoschools.org from a sender with the email address of ["bombinschool1178@gmail.com."](mailto:bombinschool1178@gmail.com) The subject line of the email stated, "Bomb," and the body of the email stated, "Bomb. Run. 9:00 Sharp."

On October 4, 2023, at 8:32 P.M., Ms. McCann was sent a second email addressed to her work email address from the sender ["bombinschool1178@gmail.com."](mailto:bombinschool1178@gmail.com) The subject line of the email stated, "Re: Bomb," and the body of the email stated, "It's hidden in the middle school, find it in time or else the middle school will be destroyed."

...

On October 5, 2023, at 11:03 P.M. Ms. McCann received a third email addressed to her work email address, this time from a sender with the email address of ["shooterschool27@gmail.com."](mailto:shooterschool27@gmail.com) The subject line of the email read "Shoot Up," and the body of the email read "I'm going to shoot up the school."

The emails from October 4, 2023, resulted in all schools within the Unified School District of Antigo being closed for the day on October 5, 2023....

An interview was conducted with [the pupil] on October 20, 2023, by Officer Kyle Schilling. Following the interview, Officer Schilling reported to Superintendent Glenda Oginski that [the pupil] admitted to sending the emails, and admitted to using a private VPN to hide his identity and location. Although [the pupil] admitted to sending the emails and threats, he would not provide a reason as to "why" he made/sent them.

The hearing was held in closed session on November 9, 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 knowingly conveyed or caused to be conveyed a threat or false information concerning an

attempt or alleged attempt being made or to be made to destroy school property by means of explosives. 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 November 9, 2023, was mailed separately to the pupil and his mother. The order stated the pupil was expelled until age 21, and provided the opportunity for early reinstatement at the beginning of the 2025-2026 school year if the pupil met certain conditions. 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 two issues which requires consideration. First, appellant states that she was never told that the pupil had been suspended. Violations of the suspension statute are outside the scope of the state superintendent's review and I have no authority to determine whether a violation of the suspension statute occurred. *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022); *R.B. v. Black River Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 742 (Sep. 23, 2016) (citing *Madison Metro. Sch. Dist. v. Wisconsin Dep't of Pub. Instruction*, 199 Wis. 2d 1, 13, 543 N.W.2d 843,

848 (Ct. App. 1995)). Even if the district did violate the suspension statute, that violation would not provide a basis to overturn the expulsion. *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022); *R.B. v. Black River Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 742 (Sep. 23, 2016).

Second, appellant states that the pupil was being tested for learning disorders during his suspension, that the testing was completed after the expulsion hearing and that the testing determined that the pupil “is autistic along with other things.” 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); *R.M. v. Oak Creek-Franklin Joint Sch. Dist. Bd. of Educ.*, Decision and Order No. 711 (Jan. 30, 2014). Such challenges are beyond the scope of the state superintendent’s review when, as is the case here, there is no evidence in the record that the pupil was identified as a child with a disability prior to the expulsion hearing. *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); *S.R. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 723 (Feb. 25, 2015). If a school district had knowledge that a student is a child with a disability before the expellable offense occurred, the student may assert the procedural protections of the Individuals with Disabilities Education Act (IDEA). *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022); *K.F. v. Chippewa Falls*

Area Unified Sch. Dist. Bd. of Educ., Decision and Order No. 739 (Aug. 2, 2016) (citing 34 C.F.R. § 300.534(a)). If a school district lacks such knowledge, it may discipline the student the same way it would discipline a child without a disability. *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 810 (May 13, 2022); *K.F. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 739 (Aug. 2, 2016) (citing 34 C.F.R. § 300.534(d)). Appellant concedes that the pupil had not been identified as having a learning disorder prior to the expulsion hearing, let alone having been identified as a child with a disability.¹ Therefore, the pupil’s post-expulsion diagnosis is not a basis for reversal of the expulsion.

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.

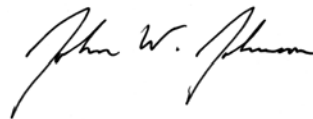
CONCLUSIONS OF LAW

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 Board of Education of the Unified School District of Antigo is affirmed.

Dated this 7th day of March, 2024



John W. Johnson, Ph.D.
Deputy State Superintendent of Public Instruction

¹ As the district points out in its brief, a learning disorder diagnosis does not automatically make the pupil a child with a disability. See 34 CFR § 300.8(a)(2)(i) (“if it is determined, through an appropriate evaluation...that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs related services and not special education, the child is not a child with a disability under this part.”).

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]

Glenda Goginski
District Administrator
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