


THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p></p> <p>by Waupun Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 24-EX-02</p>
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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 Waupun Area School District Board of Education to expel the above-named pupil from the Waupun Area School District. This appeal was filed by the pupil’s mother and received by the Department of Public Instruction on January 31, 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) and has been delegated to me under Wis. Stat. § 15.02(4).

FINDINGS OF FACT

The record contains a letter dated November 7, 2023, from the district administrator of the Waupun Area School District. The letter advised that a hearing would be held on November 13, 2023 that could result in the pupil’s expulsion from the Waupun Area 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 which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that:

On November 3, 2023 at approximately 1:12 p.m. you waited for another student to enter the girl's phy ed locker room at the JSHS, sat across from her gym locker, and when she finally turned around and looked at you, you punched her two times in the face using a spiked necklace, which resulted in you breaking the other student's nose.

The hearing was held in closed session on November 13, 2023. The pupil, her parents and her sister appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parents 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 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 17, 2023, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through her 21st birthday but would be eligible for conditional reinstatement at the beginning of the 2026-2027 school year if she met certain conditions. Minutes and an audio recording 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 district demands the pupil's expulsion.

The appeal letter in this case raises three issues which require consideration. First, appellant contends that the pupil was expelled because the board mistakenly thought that the pupil used a weapon. Appellant concedes that "no one realized that a weapon was not actually used until after the expulsion hearing took place" and asks that the board "right their mistake." A school board's findings will be upheld if any reasonable view of the evidence sustains them. *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). The expulsion hearing was the pupil's opportunity to challenge the evidence presented by the district and to present any additional evidence that the pupil or appellant wanted the board to consider. New evidence may not be submitted for the first time on appeal. *Loyal Sch. Dist. Bd. of Educ.*, Decision and Order No. 822 (Dec. 6, 2022); *K.F. v. Chippewa Falls Area Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 739 (Aug. 2, 2016). In this case, the board heard evidence from the administration that the pupil confessed to planning to hit the other student with the necklace and that she did hit the victim. The pupil did not dispute that characterization of her statements at the hearing. In her closing statement, appellant stated that the pupil now understands that she used the necklace as a weapon. Therefore, a reasonable view of the evidence supports the board's finding that the pupil hit the other student with the necklace. The pupil may ask the board to reconsider her expulsion, and the board may choose to reverse the expulsion, but reversal is not required.

Second, appellant contends that the principal has a conflict of interest because the principal knows the other student's family. The law presumes that school staff members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. *See Heine v. Chiropractic Examining Bd.*, 167 Wis. 2d 187, 194 n.3 (Ct. App. 1992); *Danielle A.W. v. Baron Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 310 (Jan. 31, 1997). Appellant has not alleged and the record does not contain facts that might overcome the presumption of good faith in this case.

Finally, appellant requests that the expulsion be modified to allow the pupil to return to school in the fall at the beginning of her 9th grade year, stating that she feels that would be fair given the circumstances. 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).

A point not raised by appellant merits mention. I caution the school district against simply copying the description of alleged facts from the notice of expulsion to the expulsion

order without ensuring that all allegations were proven at the expulsion hearing. In addition to finding that the pupil “punched [another student] two times in the face using a spiked necklace,” the board also concluded that the pupil broke the other student’s nose. However, the record of the expulsion hearing contains no evidence regarding any injury to the other student. Therefore, no reasonable view of the evidence supports the board’s finding that the pupil broke the other student’s nose. Because the board’s finding with respect to the pupil punching the other student is supported by a reasonable view of the evidence introduced at hearing and provides sufficient grounds to expel the pupil, the expulsion will not be reversed.

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 Waupun Area School District Board of Education is affirmed.

Dated this 18th day of March, 2024



Sachin Chheda
Executive Director, Office of State Superintendent
Department 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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District Administrator
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COPIES MAILED TO:

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