


THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p></p> <p>by Alma Center-Humbird-Merrillan School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 24-EX-06</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 Alma Center-Humbird-Merrillan School District Board of Education to expel the above-named pupil from the Alma Center-Humbird-Merrillan School District. This appeal was filed by the pupil’s guardian and received by the Department of Public Instruction on April 4, 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 entitled “Notice of Expulsion Hearing,” dated January 30, 2024, from the superintendent of the Alma Center-Humbird-Merrillan School District. The letter advised that a hearing would be held on February 13, 2024 that could result in the pupil’s

expulsion from the Alma Center-Humbird-Merrillan School District through his 21st birthday.

The letter was sent separately to the pupil and his guardians by certified mail. The letter alleged that the pupil was guilty of repeated refusal or neglect to obey the rules; engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others; and while not at school or while not under the supervision of a school authority, engaged in conduct which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that:

During the evening of January 18th, 2024 and January 22nd, 2024, [the pupil] was involved in an incident of physical aggression, physical assault, and hazing towards two underclassmen....

The incidents occurred on the school bus and the Alma Center Jr/Sr High School locker room following the boys' basketball games on January 18th, 2024 and January 22nd, 2024. In each situation [the pupil] was a member of a party of four upperclassmen who participated in the assault in what appears to be an act of "hazing" of the underclassmen basketball players. Footage from the bus's security cameras shows both incidents.

In the first incident on January 18th, 2024 the assault begins at approximately 9:58 PM as the bus is traveling between Hixton and Alma Center....

...Two minutes after the first incident ends, [the pupil] and Student A again grab the victim and restrain him in the seat....

After exiting the bus, players enter the Alma Center Jr/Sr High School building and begin filtering into and out of the locker room. There are no cameras in the locker room, but it has been reported by three individuals that the assault continued in the locker room at approximately 10:06 PM. According to one student who witnessed the incident in the locker room, Student A, Student D, and [the pupil] grab the victim and lift him off the ground and hold him against the lockers. The students pull his pants and underwear off and begin to spank his bare backside. It was reported that the victim was spanked approximately 5 times or more....

On January 22nd, 2024, [the pupil], Student A, Student D, and Student C were again involved in an incident of hazing directed towards a different 9th grade basketball player. The incident begins at approximately 10:28 PM between the towns of Elk Creek and Hale while the team was riding the bus. All four students begin by surrounding the victim in his seat where they begin to hold him down while they attempt to remove articles of clothing....

The letter detailed additional specific conduct and statements allegedly engaged in by the pupil and by Student A, Student C and Student D.

The hearing was held in closed session on February 13, 2024. The pupil and his guardians appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his guardians 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 engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others and that the pupil was guilty of repeated neglect or refusal to obey school rules. 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 is dated February 26, 2024. The order stated that the pupil was expelled through the age of 21. The order permits the pupil to attend the district's online education program immediately and during any part of his expulsion during which he is not accepted for in-person instruction, and it allows him to apply for reinstatement to in-person instruction for the first semester of the 2024-2025 school year subject to certain conditions. 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 three issues which require consideration. First, appellant challenges the sufficiency of the evidence presented to the board at the expulsion hearing. Videos of the incidents were shown at the expulsion hearing but everyone except the pupil and the victim were blurred to mask their identities. Appellant contends that the video "did not tell the truth of what happened that day nor did it prove [the pupil] [did] what they were saying." Appellant notes that the district showed her the unedited video of the incidents before the hearing and complains that the district refused to show the unblurred video to the school board because of student confidentiality issues. During the hearing, appellant challenged the administration's description of the actions in the videos and provided additional information, admitted to by the administration, including the fact that both victims were laughing in later parts of the video not shown at the hearing. The board had the opportunity to consider appellant's arguments and evidence and to reach its own conclusion regarding the pupil's actions based on the totality of the evidence presented to it. The school district is only required to establish its case against the student by a preponderance of the evidence. *T.M. v. Monona Grove Sch. Dist. Bd. of Educ.*, Decision and Order No. 772 (Sep. 26, 2018); *M.M. v. Shawano Sch. Dist. Bd. of Educ.*, Decision and Order No. 755 (Jan. 24, 2018); *Earl N. v. Milwaukee Sch. Dist., Bd. of Sch. Dirs.*, Decision and Order No. 111 (Mar. 3, 1983). Arguments concerning the sufficiency of the evidence are generally beyond the scope of review, *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011), and 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). In this case, a reasonable view of the evidence presented at the hearing supports the board's conclusion that the pupil participated in multiple incidents of hazing. Because the pupil's conduct met the statutory bases for expulsion found by the board, the board's finding to that effect will be upheld.

Second, appellant argues that the pupil was "very targeted" and that the principal "did nothing but try to make [the pupil] look worse than he was," contending that the principal showed grades from two years ago when the pupil was not doing well in school but did not talk about how much he has improved. Appellant also notes her concern that the pupil's return to in-person instruction depends on approval by "the principal who tried so hard to get him out and the superintendents." 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). The pupil's discipline record and transcripts were included in the record and appellant countered the administration's presentation by arguing to the board that the pupil's grades had improved and that he had not previously been in significant trouble. She also offered mitigating evidence regarding the pupil's "tough life." After considering the administration and appellant's arguments, the board chose not to adopt the administration's recommendation in full, instead modifying that recommendation in the pupil's favor to allow the pupil to apply for a return to in-person instruction at an earlier time. The principal's presentation is not a basis for reversal.

Finally, appellant contends that the pupil’s expulsion “is not right” and that “the school is treating him wrong.” She notes that the pupil has colleges watching him in basketball and “[h]e can now never play sports again.” I understand appellant to be arguing that the board’s decision to expel the pupil and the terms of the expulsion are too harsh. 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 circumstance here that would prompt me to overrule the determination of the board that expulsion is an appropriate response to the pupil’s actions or that the terms of the expulsion are too harsh. The board found that the pupil engaged in hazing as a member of the basketball team. Therefore, it is not unreasonable for the board to prohibit the pupil from future participation in district-sponsored athletic activities even if the pupil returns for in-person instruction for the 2024-2025 school year.

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 Alma Center-Humbird-Merrillan School District Board of Education is affirmed.

Dated this 28th day of May, 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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