

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Kewaskum School District
Board of Education

DECISION AND ORDER

Appeal No.: 24-EX-10

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 Kewaskum School District Board of Education to expel the above-named pupil from the Kewaskum School District. This appeal was filed by the pupil’s father and received by the Department of Public Instruction on July 5, 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 “Revised Notice of Pupil Expulsion Hearing,” dated March 15, 2024, from the district administrator of the Kewaskum School District. The letter advised that a hearing would be held on March 21, 2024 that could result in the pupil’s expulsion from the Kewaskum 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

On February 29, 2024 at approximately 10:45 a.m. in the Kewaskum High School cafeteria, [the pupil] showed other students video footage of an incident of two minor Kewaskum students engaging in sexual activity involving other Kewaskum School District Students.

The hearing was held in closed session on March 21, 2024. The pupil and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his parents and his attorney 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 March 22, 2024, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday, and stated that the district would provide the pupil with an online educational option during the period of expulsion. 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 demands the pupil's expulsion.

The appeal letter in this case raises several issues which require consideration. First, appellant contends that expulsion is a disproportionate punishment for the pupil's conduct of showing his friends a video that the pupil did not ask for, was not in and had no part in making. Contrary to the district's assertion, 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.

Second, appellant requests "the opportunity to present his side of the story, as I believe it would provide a more comprehensive understanding of the circumstances surrounding the incident." 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). With his reply statement,

appellant submits letters from parents of the classmates to whom the pupil showed the video and argues that because “[n]one of the classmates felt they were harassed or bullied,” the board’s finding that the pupil endangered the property, health or safety of others is not appropriate. Appellant also submits a letter from the mother of the children depicted in the video in which she states that she hopes the pupil is able to get back into school. However, the victims’ mother also states that the victims were “scared and embarrassed of” the pupil. Even if new evidence were admissible on appeal, it was not unreasonable for the board to conclude that showing videos of minors engaging in sexual activity endangered others and I decline to reverse the board’s finding.

Third, appellant requests “a thorough review of the disciplinary process that led to [the pupil’s] expulsion.” Appellant suggests that certain factors may have been overlooked or not adequately considered during the decision-making process. The pupil was given the opportunity to argue against expulsion at the hearing, and his parents and attorney did so on his behalf. Appellant has not suggested that the board failed to consider those arguments. Further, the board followed the expulsion procedures required by Wisconsin law. In his reply brief, appellant argues that the pupil did not violate school district policies. However, for expulsion purposes, whether a student violated school district policies is relevant only to expulsion on the ground of “repeated refusal or neglect to obey the rules” and not to the pupil’s expulsion here, which was for “conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others.” Wis. Stat. § 120.13(1)(c)1.

Fourth, appellant contends that the school board erred in determining that the interest of the school demands the pupil’s expulsion. Appellant argues that the pupil is himself a crime victim because the photos were sent to him without him seeking them out. Appellant also

contends that the pupil has an exemplary academic and athletic record and that “[t]he interest of the school demands that we show its students that good kids who make questionable decisions will still be ok.” The board has wide discretion in determining whether the interest of the school demands expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interest of the school demands expulsion. *Oshkosh Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 808 (Mar. 16, 2022); *T.S. v. West Allis-West Milwaukee Sch. Dist. Bd. of Educ.*, Decision and Order No. 684 (May 20, 2011). The arguments raised by appellant were also raised at the expulsion hearing and the school board was able to consider them before it made the decision to expel the pupil. The school board is the entity best situated to evaluate whether the interest of the school demands the pupil’s expulsion and I decline to overturn that decision here.

Finally, appellant states that to his knowledge, neither of the 2 middle school students who distributed the video among their classmates has received any repercussions for their actions. Because expulsions are considered on a case-by-case basis, the treatment of other students is outside the scope of 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, I will not address issues of fairness and unevenness of disciplinary measures in an expulsion appeal. *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); *J.H. v. West Bend Sch. Dist. Bd. of Educ.*, Decision and Order No. 721 (Aug. 18, 2014). This is because I have available for review only the record of the expulsion that is being appealed and lack knowledge of all the evidence implicating or exonerating other students

or any mitigating circumstances that may apply to those students. In the present case, there is no allegation that the pupil was treated differently than the 2 middle school students because of discrimination based on the pupil's membership in a protected class. If there were, the appropriate pathway to address allegations of discrimination is through filing a complaint with the district through the district's non-discrimination policy and procedure. If a student does so and receives a negative determination from the district, the student may file an appeal under Wis. Stat. § 118.13(2)(b). *Oak Creek-Franklin Jt. Sch. Dist. Bd. of Educ.*, Decision and Order No. 823 (Dec. 6, 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). I note further that the law presumes that public officials, including school staff members and school board members, 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); *Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *Danielle A.W. v. Baron Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 310 (Jan. 31, 1997). The record in this case contains no evidence of bias.

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 Kewaskum School District Board of Education is affirmed.

Dated this 22 day of August, 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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