

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Green Bay Area Public School District
Board of Education

DECISION AND ORDER

Appeal No.: 24-EX-11

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 120.13(1)(e) from the order of the Green Bay Area Public School District Board of Education to expel the above-named pupil from the Green Bay Area Public School District. This appeal was filed by the pupil’s parents and received by the Department of Public Instruction on July 12, 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)(e) and has been delegated to me under Wis. Stat. § 15.02(4).

FINDINGS OF FACT

The record contains a letter entitled “Notice of Scheduled Pupil Expulsion Hearing,” dated May 10, 2024, from the Interim Superintendent of Schools and Learning of the Green Bay Area Public School District. The letter advised that a hearing would be held before an

independent hearing officer on May 21, 2024 that could result in the pupil's expulsion from the Green Bay Area Public School District through his 21st birthday. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil neglected to obey a district policy and engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school. The letter specifically alleged:

On May 2, 2024 at approximately 12:10p.m., [the pupil] and three other individuals came to the area surrounding East High School in a black SUV vehicle. The SUV pulled into the established traffic route that all vehicles follow for entry to East High School and then parked near the pool at Joannes Park. This parking lot is used for East High School parking during school hours pursuant to an agreement between the City of Green Bay and East High School. [The pupil] and two other individuals exited the SUV, carrying weapons that appeared to be firearms. [The pupil] and the other individuals began running around, chasing one another and firing the weapons. [The pupil] and another student then went across the street from East High School into Joannes Park, and as East High School Administration were approaching them, the School Resource Officer (SRO) asked [the pupil] to identify himself. [The pupil] refused to identify himself and indicated he doesn't go to Green Bay Schools when he was asked if he had a school ID. East Administration asked [the pupil] and the other individual to come to East, and [the pupil] began to walk away. The SRO told [the pupil] he was not free to leave, and [the pupil] then ran away from the SRO. The SRO chased [the pupil] while calling for additional law enforcement assistance. [The pupil] was stopped at the back of Joannes Park near the pool. While running from the SRO, [the pupil] threw an item over the Joannes Pool fence. An Associate Principal was able to work with the City of Green Bay Parks Department to retrieve the item, which was a gray and black Orbeez water pellet gun. In questioning [the pupil] about the incident, he admitted to being at Joannes Park with an Orbeez gun and shooting one individual. Following this incident, multiple students reported being shot by the Orbeez guns, including some at close range. This incident created chaos, fear and panic among the East High School community, as a large number of students and staff were outside East at the time of the incident.

The hearing was held in closed session on May 21, 2024. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father were given

the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

The hearing officer found that the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school. The hearing officer also found that the best interests of the district require the pupil's expulsion. The order for expulsion containing the findings of fact of the hearing officer, dated May 24, 2024, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday and allowed for early reinstatement for the second semester of the 2024-2025 school year if the pupil met certain conditions. The expulsion order issued by the independent hearing officer was reviewed and modified by the school board on June 24, 2024, and the school board's order dated June 26, 2024 was mailed separately to the pupil and his parents. The board found that the pupil's actions endangered the property, health or safety of others within the meaning of Wis. Stat. § 120.13(1)(c) and constituted a refusal or neglect to obey the school rules and a violation of board policy. The school board further found that the best interests of the district demand the pupil's expulsion. The order stated the pupil was expelled through his 21st birthday with an early reinstatement option for the second semester of the 2024-2025 school year, but modified the order issued by the independent hearing officer to require the district to offer virtual educational services to the pupil for the first semester of the 2024-2025 school year. A transcript of the expulsion hearing before the independent hearing officer is part of the record.

DISCUSSION

The expulsion statute – Wis. Stat. § 120.13(1)(c) and (e) – 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.

In this case, the expulsion must be reversed because the school board’s decision is not based upon one of the statutory grounds. Wisconsin Statute § 120.13(1)(e)4. provides;

The notice [of the expulsion hearing] shall state all of the following:

- a. The specific grounds, under par. (c) 1., 2., or 2m., and the particulars of the pupil’s alleged conduct upon which the expulsion proceeding is based.

The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record and must be reflected in the ultimate findings of the board. *Randolph Sch. Dist. Bd. of Educ.*, Decision and Order No. 824 (Jan. 18, 2023); *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022). Because the school district is required to provide the pupil advance notice of the statutory grounds on which it intends to proceed, it cannot make its finding based upon different statutory grounds for which the student did not receive notice. *Somerset Sch. Dist. Bd. of Educ.*, Decision and Order No. 807 (Feb. 7, 2022); *Travis J.M. v. Deerfield Cmty. Sch. Dist. Bd. of Educ.*, Decision and Order No. 423 (Sep. 25, 2000). In this case, the only statutory ground for expulsion cited in the notice of expulsion hearing was that the pupil “engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health, or safety of others at school.”¹

¹ The notice also alleged that the pupil neglected to obey a district policy. Violation of district policy may be grounds for discipline, but it is not a statutory ground for expulsion.

The board’s findings of fact and conclusions of law do not cite any statutory ground for expulsion and do not contain a finding that the pupil 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. The only statutory ground stated anywhere in the board’s order is in the first paragraph:

NATURE OF THE CASE

This case came to be heard on May 21, 2024, in accordance with Wis. Stat. §120.13(1)(c) and (e), for the expulsion of [the pupil] from the schools of the Green Bay Area Public School District for engaging in conduct at school or while under the supervision of a school authority which endangered the property, health or safety of others at school.

(emphasis added). Even if this were a finding of the board, however, this is a different ground for expulsion than was alleged in the notice of expulsion hearing. In contrast to the representation made in the district’s brief,² the board’s conclusions of law were:

A. That by their conduct, [the pupil] was guilty of a violation of Board Policy 443.7 and school rules on April 30, 2024.³

B. That [the pupil]’[s] actions endangered the property, health or safety of others within the meaning of Wis. Stat. §120.13(1)(c), as set forth in the above paragraphs in the Findings of Fact.

² In its brief, the district states:

The Board of Education determined that expulsion was the appropriate remedy and “that the interests of the school demand [STUDENT]’s expulsion” as he “engaged in conduct while not at school or while not under the supervision of a school authority that endangered the property, health or safety of others at school.” (Order at 3). The Board of Education adopted the Order for Expulsion as written by the IHO, with one modification, to provide that the District shall provide online educational services to the Student for the first semester of the 2024-2025 school year, until he is eligible to apply for early reinstatement for the second semester of the 2024-2025 school year. (Order at 3-4).

(Br. at 7.) These statements do not accurately quote the board’s order and do not accurately represent the changes made by the board to the independent hearing officer’s order.

³ This appears to be a typographical error. It is undisputed that the allegations involve conduct that occurred on May 2, 2024. The board should correct this scrivener’s error, but it is not a basis to reverse the expulsion. *Chequamegon Sch. Dist. Bd. of Educ.*, Decision and Order No. 812 (Jun. 2, 2022).

C. That the conduct of [the pupil] constituted a refusal or neglect to obey the school rules and a violation of Board Policy.

D. That by their actions, [the pupil] has caused a disruption in the educational and safety interests of other students, staff and the community.

E. That the Independent Hearing Officer has weighed the interests of [the pupil] and their fellow students, the faculty and the staff; has determined that the appropriate remedy is expulsion; and that the best interests of the District demand their immediate expulsion.

Although “repeated refusal or neglect to obey the rules,” Wis. Stat. § 120.13(1)(c)1., may be a basis for expulsion if properly noticed and proved, “refusal or neglect to obey the school rules” is not grounds for expulsion. In contrast to the board, the independent hearing officer found that “that the Student engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school.” The independent hearing officer listed specific factual findings supporting this conclusion. With one exception, a reasonable view of the evidence introduced at the hearing supports the facts found by the independent hearing officer. (A reasonable view of the evidence introduced at the hearing does not support the finding that the pupil “complied in turning the item [an Orbeez water pellet gun] and ammunition holder over to East High School Administration.” However, the other facts found by the independent hearing officer that are supported by the record support the pupil’s expulsion.)

Instead of adopting the findings of fact of the independent hearing officer, the board “found”, verbatim, the particulars of the pupil’s alleged conduct that were included in the notice of expulsion hearing. This included finding that the pupil came to the area surrounding East High School in a black SUV vehicle. At the hearing, the administration conceded that this allegation was not accurate and the independent hearing officer struck it from the record. One additional board finding, that “[t]he student has not denied the conduct described in the documents

submitted by the Administration and did not dispute the facts of the case,” is also not a finding made in the independent hearing officer’s order. It is true that the pupil did not dispute that he was shooting at friends with a water pellet gun by East High School, but the allegation and board finding that the pupil arrived in a black SUV vehicle was both disputed by the pupil and acknowledged by the administration to be false.

The minutes of the board’s meeting provide no information as to why the board failed to adopt the findings of fact of the independent hearing officer. The court reporter’s certificate attached to the transcript of the hearing indicates that the transcript was prepared on July 19, 2024, and, therefore, presumably was not reviewed or considered by the school board on June 24, 2024 when the board reviewed the order of the independent hearing officer. No recording of the expulsion hearing was provided as part of the record and the transcript of the hearing does not suggest that a recording was made. 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). Here, it is unclear what basis the board had to not adopt the findings of fact of the independent hearing officer, other than review of the exhibits that were admitted into evidence. As already discussed, certain statements in the board’s findings of fact are not supported by a reasonable view of the evidence. The remaining allegations in the notice sufficiently alleged expellable conduct by the pupil, but the black SUV allegation’s inclusion in the board’s order is concerning, especially given the repeated discussion at the hearing regarding the inaccuracy of that allegation.

In their appeal letter, appellants ask for the expulsion to be modified so that the pupil may be reinstated to the public school system at the beginning of the first semester of the 2024-2025

school year instead of at the beginning of the second semester. Appellants do not seek any change to the conditions of reinstatement. Appellants note that before the pupil's expulsion, they were in the process of enrolling the pupil in a different district through open enrollment but state that open enrollment would be denied if the pupil could not attend on the first day of the 2024-2025 school year. Appellants state that they do not feel that online services for the first semester and reinstatement for the second semester is in the pupil's best interest and argue that argue that "a fresh start as a freshman at a new school, with friends that are playing football, lifting weights, and having positive structure is a better option." However, the best interest of the pupil is not an element that must be considered by the school board. *Chequamagon Sch. Dist. Bd. of Educ.*, Decision and Order No. 805 (Aug. 10, 2021); *W.T. v. Beloit Turner Sch. Dist. Bd. of Educ.*, Decision and Order No. 591 (May 4, 2007).

The state superintendent has the authority to "approve, reverse, or modify" the school board's decision. Wis. Stat. § 120.13(1)(e)4.k. 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). For the reasons already discussed, the expulsion will be reversed because the order issued by the school board is inadequate to support the pupil's expulsion. Only the initial sections of the board's order (nature of the case, findings of facts and conclusions of law) are problematic. I note that the board's modification – in the pupil's favor - of the terms of expulsion issued by the independent hearing officer is an acceptable exercise of

the board's review authority under Wis. Stat. § 120.13(1)(e)4.h. 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.

In reviewing the record in this case, I find that the school district failed to comply with all of the procedural requisites. I, therefore, reverse this expulsion. However, because the independent hearing officer's order was legally sufficient to support expulsion, a new expulsion hearing is not required should the district continue to pursue expulsion. If the board chooses, it may correct the errors in the board's order by again reviewing the independent hearing officer's order and issuing a new board order that contains findings that are both supported in the hearing record and sufficient to support expulsion, and by sending the new expulsion order to the pupil and his parents. *See, e.g., Goodman-Armstrong Creek Sch. Dist. Bd. of Educ.*, Decision and Order No. 787 (Dec. 16, 2019); *Clarence S. v. Bonduel Sch. Dist. Bd. of Educ.*, Decision and Order No. 320 (Apr. 10, 1997).

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 failed to comply with all of the procedural requirements of Wis. Stat. § 120.13(1)(e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Green Bay Area Public School District Board of Education is reversed.

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)(e)4.m. 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]

Vicki Bayer
District Administrator
Green Bay Area Public School District
200 South Broadway
Green Bay, WI 54303

COPIES MAILED TO:

[Redacted]

[Redacted]

Melissa Thiel Collar
Green Bay Area Public School District
200 South Broadway
Green Bay, WI 54303