

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Monona Grove School District
Board of Education

DECISION AND ORDER

Appeal No.: 24-EX-12

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 Monona Grove School District Board of Education to expel the above-named pupil from the Monona Grove School District. This appeal was filed by the pupil and his father 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 Pupil Expulsion Hearing,” dated May 16, 2024, from the superintendent of the Monona Grove School District. The letter advised that a hearing would be held on May 29, 2024 that could result in the pupil’s expulsion from the Monona Grove School District through his 21st birthday. The letter was sent separately to the

pupil and his father 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:

At approximately 2:40 p.m. on May 13, 2024, the school nurse and administrators were notified of a student who had become very ill in the boys' 1st floor bathroom and was unable to stand. When questioned by administration and the School Resource Officer, the student claimed that in his tech ed class on May 13, 2024, (which is 4th hour and runs from 1:57 p.m. to 3:30 p.m.) he was given a gummy by [the pupil] that the student did not know contained THC and he consumed that gummy. The student was tested and came up positive for THC in this system. Based on administration's investigation of the incident, including interviews with the student victim, [the pupil], and other students in their class, administration concludes that [the pupil] knowingly gave the THC gummy to the student without his knowledge.

The hearing was held before an independent hearing officer in closed session on May 29, 2024. The pupil, his father and his stepmother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents 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 at school or while under the supervision of a school authority that endangered the property, health or safety of others. The hearing officer also found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact of the hearing officer, dated June 3, 2024, was mailed separately to the pupil and his father. The order stated the pupil was expelled through the conclusion of the 2026-2027 school year and allowed for the pupil's early reinstatement no earlier than September 1, 2025, provided he met certain conditions. The order also stated that the district would provide continued educational services to the pupil during the term of his expulsion and that the pupil could request expungement of the expulsion order no earlier than one month following his graduation from high school. The expulsion order issued by

the independent hearing officer was reviewed and approved by the school board on June 12, 2024, and the school board's order dated June 13, 2024 was mailed separately to the pupil and his father. 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.

The appeal letter in this case raises several issues which require consideration. First, appellants complain that the school interrogated the pupil before contacting his parents and outside their presence. The pupil has no statutory or constitutional right to have his parents present during an investigative interview at school. *See Loyal Sch. Dist. Bd. of Educ.*, Decision and Order No. 822 (Dec. 6, 2022); *Jeremy B. v. Waukesha Sch. Dist. Bd. of Educ.*, Decision and Order No. 395 (Aug. 16, 1999). Appellants also complain that the school did not think of the pupil's welfare when they suspended him, told him that he might be expelled and then sent him home where he was alone and afraid. This is not a basis for reversal of an expulsion.

Second, appellants complain that they were not provided the evidence introduced at the expulsion hearing in advance of the hearing, preventing them from investigating further or developing their defense. The notice of expulsion hearing provided adequate notice to the pupil

and his family of the particulars of the pupil's alleged misconduct. Although school districts are strongly encouraged to do so, there is no general requirement that the district provide copies of exhibits to the pupil prior to the expulsion hearing. *Madison Metro. Sch. Dist. Bd. of Educ.*, Decision and Order No. 832 (Jul. 6, 2023); *G.H. v. Sch. Dist. of Elmbrook Bd. of Educ.*, Decision and Order No. 769 (Aug. 14, 2018). The district is required to provide to the pupil at the hearing copies of all documents presented to the board or the hearing examiner, and the district met this requirement. *Milwaukee Bd. of Sch. Dirs.*, Decision and Order No. 809 (May 3, 2022); *B.S. v. Marshall Sch. Dist. Bd. of Educ.*, Decision and Order No. 626 (July 11, 2008).

Third, appellants point to inconsistencies in the hearsay evidence introduced at the hearing. Even though testimony from witnesses with firsthand knowledge might provide better evidence, there is longstanding precedent that hearsay is admissible in Wisconsin expulsion proceedings. The Wisconsin Court of Appeals has held “that a student’s right to due process in an expulsion hearing is satisfied even though some of the testimony presented was hearsay given by members of the school staff.” *Racine Unified Sch. Dist. v. Thompson*, 107 Wis. 2d 657, 659, 321 N.W.2d 334, 335 (Ct. App. 1982) (reversing state superintendent’s order that had found hearsay inadmissible at expulsion hearing). Appellants were able to challenge the evidence and inconsistencies in that evidence at the hearing.

Fourth, appellants contend that Associate Principal Kling did not provide the pupil due process and was biased against the pupil. As an example, appellants point to Associate Principal Kling’s statement that he did nothing to follow up on the allegation by another student that the pupil flushed edibles, a blunt and some weed down a toilet in the first-floor bathroom and that Mr. Kling did not check footage from the cameras outside the bathroom to confirm or disprove the allegation. Appellants state that they “feel Mr. Kling was unfair because it seems like all he

cared for is to gather people that will support each other's statements to pin [the pupil] down.”

The state superintendent reviews expulsions to ensure compliance with the requirements contained in Wis. Stat. § 120.13(1)(c) and (e). *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020); *Madison Metro. Sch. Dist. v. Wis. Dep't of Public Instruction*, 199 Wis. 2d 1, 16-17, 543 N.W.2d 843, 849-50 (Ct. App. 1995). In addition, the state superintendent must ensure that basic due process was afforded in the expulsion hearing. *See Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019); *P.L.Y. v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, Decision and Order No. 182 (Oct. 9, 1991) (state superintendent must address constitutional error). Due process in a student expulsion hearing does not have to take the form of a judicial or quasi-judicial trial, and the due process required in an expulsion hearing cannot be equated to that required in a criminal trial or juvenile delinquency hearing. *See, e.g., Linwood v. Board of Educ.*, 463 F.2d 763, 770 (7th Cir. 1972); *Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 795 (July 1, 2020). “As long as the student is given notice of the charges against him, notice of the time of the hearing and a full opportunity to be heard, the expulsion procedures do not offend due process requirements.” *Remer v. Burlington Area Sch. Dist.*, 286 F.3d 1007, 1010–11 (7th Cir. 2002) (quoting *Betts v. Bd. of Educ.*, 466 F.2d 629, 633 (7th Cir.1972)).

In this case, appellants were provided a full opportunity to challenge Associate Principal Kling's investigation and alleged bias at the hearing, and the record indicates that the hearing officer considered their arguments: “I will consider everything that's been presented and issue my decision as soon as I can. I want -- this is a – a tough one. I want to think about this.” Although appellants disagree with Associate Principal Kling's conduct of the investigation and

his conclusion, the record indicates that the pupil received due process. With respect to the allegation of bias, 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); *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). I see nothing in the record to overcome this presumption or to support a finding of bias.

Fifth, appellants contend that the school has no physical evidence of the pupil being in possession of the drugs and that no video evidence showed the pupil giving gummies to other students. 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); *A.D. v. Silver Lake JI Sch. Dist. Bd. of Educ.*, Decision and Order No. 665 (June 28, 2010). 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). In this case, a reasonable view of the evidence – including Student A's statement that the pupil gave him the gummy – supports the findings.

Finally, appellants request an in-person meeting so they “can provide a more comprehensive understanding of the incident and other additional information to help in our appeal.” The expulsion hearing was the appellant's opportunity to challenge the evidence presented by the district and to present any additional evidence that appellants wanted the hearing officer or 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). The pupil and his parents testified, questioned the district’s witnesses and argued against expulsion at the hearing. The fact that the hearing officer and the board ultimately ruled against the pupil does not mean that they failed to consider the pupil’s evidence or arguments.

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)(e).

ORDER

IT IS THEREFORE ORDERED that the expulsion of [REDACTED] by the Monona Grove School District Board of Education is affirmed.

Dated this 4 day of September, 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]

Tanya Fredrich
District Administrator
Monona Grove School District
5301 Monona Drive
Monona, WI 53716

COPIES MAILED TO:

[REDACTED]

[REDACTED]

Douglas E. Witte
Boardman & Clark LLP
1 S. Pinckney St. Suite 410
P.O. Box 927
Madison, WI 53701-0927