

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of



by Slinger School District
Board of Education

DECISION AND ORDER

Appeal No.: 24-EX-13

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 Slinger School District Board of Education to expel the above-named pupil from the Slinger School District. This appeal was filed by the pupil’s parents and received by the Department of Public Instruction on July 15, 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 Pupil Expulsion Hearing,” dated August 14, 2023, from the district office administrator of the Slinger School District. The letter advised that a hearing would be held on August 21, 2023 that could result in the pupil’s expulsion from the Slinger 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:

During the school day on Friday, May 27, 2022 at approximately 11:40-11:45 AM after 7th grade lunch and recess had concluded and as students were proceeding back to class, [the pupil] was in a Slinger Middle School hallway near Stairwell 2 and said “I have a gun!” very audibly. Students were concerned and reported this to their teacher. The report was immediately sent to Slinger Middle School principal, Kari Lutter, where a lockdown of school premises was initiated. Law enforcement then became involved.

The hearing was held in closed session on August 21, 2023. The pupil and his parents 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.

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 August 21, 2023, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. An audio recording of the expulsion hearing is 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 two issues which require consideration. First, appellants contend that the notice of expulsion hearing was not received with enough time for them to properly represent themselves at the expulsion hearing. Appellants state that they received the notice on August 17, 2023, which was less than five days before the expulsion hearing scheduled for August 21, 2023. The district responds by asserting that the notice was mailed on August 14, 2023. Appellants do not dispute that the notices were mailed on August 14, 2023. The statute requires only that the notice be sent, not received, at least five days prior to the hearing: "Not less than 5 days' written notice of the hearing under subd. 3 shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian." Wis. Stat. § 120.13(1)(c)4. (emphasis added). *See also Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019) ("statute's use of 'sent' clarifies the relevant timeline – the notice must be sent, as opposed to received, at least 5 days before the hearing"). Because the notices of expulsion hearing in this case were sent seven days before the hearing, they complied with the statutory requirement. Appellants received the notice four days prior to the hearing; this is not a situation where constitutional due process requires reversal. *Cf. Racine Unified Sch. Dist. Bd. of Educ.*, Decision and Order No. 783 (Aug. 8, 2019) (concluding that one-hour oral notice prior to expulsion hearing did not meet the constitutional requirement of adequate notice).

Second, appellants note that the superintendent answered a board member's question about the reason the pupil's previous expulsion was reversed and contend that "this question and answer prevented the School Board members from making their decision without bias or

prejudice based on their previous decision being reversed and revisited.” Appellants did not object to the question or answer during the hearing and had themselves previously discussed the appeal and separately accurately answered the question regarding the reason for the reversal. The superintendent’s answer to the board member’s question did not materially misrepresent the reason why the previous expulsion was reversed. Appellants were also invited to respond to the board member’s question about the reason for the reversal and appellant told the board, “they [the state superintendent] don’t argue the school board’s decision ... it’s your [the school board’s] decision for the expulsion or not.” When asked whether the administration still believed that expulsion is the appropriate recommendation, the administrator responded, “I can see both sides of this, and this is going to be a tough decision for the school board.” The administrator noted that the district had allowed readmittance in situations similar to the pupil, who was 13 years old, made a poor choice, had already been expelled for a year and went through proper counseling with his social worker. The administrator also noted that although the district had never revisited an expulsion before, it had also never before lost an appeal, and pointed out that appellants had provided the board some alternative possible consequences that might possibly meet the needs of the community as well as those of the pupil. Thus, both the administration and appellants made clear to the board at the hearing that whether to expel or not, and the terms of any expulsion, was up to the board and the board was free to come to a different conclusion regarding expulsion than it had at the first hearing. The question and accurate answer regarding the reason for reversal of the first expulsion did not prejudice the board and is not a basis for reversal of the second expulsion.

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.

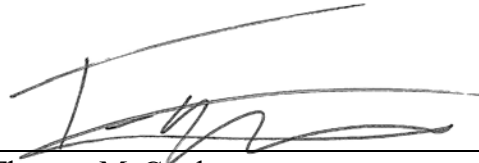
CONCLUSIONS OF LAW

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 Slinger School District Board of Education is affirmed.

Dated this 5 day of September, 2024



Thomas McCarthy
Deputy 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]

James Curler
District Administrator
Slinger School District
207 Polk Street
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COPIES MAILED TO:

[REDACTED]

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