Decision and Order No.: 859

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of [redacted] by Darlington Community School District Board of Education	DECISION AND ORDER Appeal No.: 24-EX-14

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 Darlington Community School District Board of Education to expel the above-named pupil from the Darlington Community 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 Expulsion Hearing," dated May 1, 2024, from the district administrator of the Darlington Community School District. The letter advised that a hearing would be held on May 15, 2024 that could result in the pupil's expulsion from the

Darlington Community 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 Tuesday, April 23, 2024, you attended a track meet at the Riverdale High School Track and Field Complex while under the supervision of the Darlington Community School District as part of the Darlington High School track team. At approximately 6:00 PM that evening, you went to the infield section of the track facility and showed two of your Darlington High School track teammates a pornographic video on your phone depicting another member of the track team performing oral sex on you.

The hearing was held in closed session on May 15, 2024. 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 interest of the school demands the pupil's expulsion. The order for expulsion containing the findings of the school board, dated May 15, 2024, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until his 21st birthday. Minutes and an audio recording of the school board expulsion 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, appellants contend that the pupil's expulsion was unfair because evidence of misconduct that was not cited in the notice of expulsion hearing was used in the expulsion hearing as context evidence. Appellants contend that the context evidence should not have been mentioned because the investigation into the relationship between the pupil and the other student in the video (Student A) is a police matter and the relationship was conducted entirely off school property. The district responds that the additional context was relevant to whether the school's interests demanded the pupil's expulsion, rather than a lesser punishment. The board has wide discretion in determining whether the interests of the school demand expulsion. Conduct that endangers the health, safety or property of others is more than sufficient to establish that the interests of the school demand 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); *G.J. v. Medford Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 683 (May 17, 2011); *D.S. v. Cedar Grove-Belgium Area Sch. Dist.*, Decision and Order No. 552 (July 11, 2005). The contextual evidence about the pupil's conduct that was not cited in the notice of expulsion hearing provided an explanation for the video's existence and was therefore closely related to the noticed misconduct. A board may consider such relevant information for the purpose of determining if the interest of the school demands expulsion, even if the allegations are not separately described in the notice of expulsion hearing. The pupil admitted the

misconduct described in the notice of expulsion hearing and had the opportunity to challenge the accuracy of the additional contextual evidence but did not.

To address a related issue, although the admission of contextual information about the circumstances of the incident depicted on the video is not grounds for reversal of the expulsion, both sides at an expulsion hearing must be allowed to introduce similar types of related contextual evidence. The district was allowed to introduce contextual information, but at one point the board's attorney refused to allow the pupil to answer a related question from a board member regarding the relationship between the pupil and Student A. I caution districts and school boards that if a district is allowed to introduce information relevant to whether the interest of the school demands expulsion, the pupil must also be allowed to introduce similar types of evidence. As the Court of Appeals for the Seventh Circuit has explained,

> Although the meting out of disciplinary punishment is a matter left largely to the discretion of the school authorities, since a penalty which is tantamount to expulsion was involved, and since that penalty was discretionary rather than prescribed, the school authorities were plainly required to give the plaintiff and her parent some opportunity to present a mitigative argument.

Betts v. Bd. of Educ., 466 F.2d 629, 633 (7th Cir.1972). This includes the opportunity to present mitigative evidence: "when a penalty that is 'tantamount to expulsion' is involved, the school authority must afford the student an opportunity to present evidence and argument in mitigation." *Remer v. Burlington Area Sch. Dist.*, 286 F.3d 1007, 1012 (7th Cir. 2002) (citing *Lamb v. Panhandle Cmty. Unit Sch. Dist. No. 2*, 826 F.2d 526, 528 (7th Cir. 1987); *Betts*, 466 F.2d at 633; *Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022).

However, in the present case, although the pupil was initially prevented from answering a board member's question about any relationship between the pupil and Student A, the question was asked again later in the hearing and the pupil provided an answer. As a result, the initial refusal to allow the pupil to answer the question does not require reversal.

Second, appellants complain that that the school administration said they were asking for a four-year expulsion because the pupil "was a safety threat to the school students [sic] and that he would do it again" and argue that the pupil cannot be punished for a crime he could potentially do in the future. Appellants' characterization of the administration's statements is not consistent with my review of the record. Regardless, the pupil was not expelled because he might engage in misconduct in the future. Instead, he was expelled because he engaged in past conduct that endangered other students. The board was entitled to conclude that the interest of the school demanded the pupil's expulsion.

Third, appellants contend that the pupil never showed or played a pornographic video, but instead showed pornographic thumbnails, which are still pictures of a video. 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). The pupil testified that the image he showed was in a video on his phone and that he zoomed in on the beginning of the video to show what was "pretty much a picture." The board found that the pupil showed two teammates a pornographic video on his phone. A reasonable view of the evidence supports the board's conclusion that the pupil "showed" his teammates a pornographic video.

Fourth, appellants dispute the administration's statement at the hearing that the pupil did not accept responsibility for his actions until later. Instead, according to appellants, the pupil "from the start said he showed two students pictures at the track meet and he knew it was wrong and that he understood the consequences." Appellants chose not to cross-examine the administrator who testified that the pupil initially lied about the nature of the incident and admitted that he had done the acts detailed in the incident report only after it was clear that the

truth was going to emerge. Appellants' opportunity to challenge the administrator's testimony was at the hearing. The board has discretion to give weight to the evidence and arguments, as it deems appropriate, and to judge the credibility of witnesses. *Nicolet Union High Sch. Dist. Bd. of Educ.*, Decision and Order No. 775 (Jan. 10, 2019); *New Berlin Sch. Dist. Bd. of Educ.*, Decision and Order No. 729 (Sep. 21, 2015). Appellants' disagreement with the administrator's testimony is not grounds to overturn the school board's decision.

Fifth, appellants note that the student handbook about technology does not pertain to this case because the pupil never used school technology for child pornography. As the district notes in its response brief, the pupil was not expelled for violating the district's technology policy. The pupil was expelled for conduct which endangered the property, health or safety of others, not for repeated refusal or neglect to obey school rules. A reasonable view of the evidence supports the board's conclusion that the pupil endangered the property, health or safety of others.

Finally, appellants suggest that the administrators and board members may not have been impartial due to a connection with a teacher in the district. As public officials, school staff and school board members are presumed to act in accordance with the duties of their office and act fairly, impartially, and in good faith. *See State ex rel. Wasilewski v. Bd. of Sch. Directors,* 14 Wis. 2d 243, 266, 111 N.W.2d 198, 211 (1961); *Heine v. Chiropractic Examining Bd.,* 167 Wis. 2d 187, 194 n.3, 481 N.W.2d 638, 641 n.3 (Ct. App. 1992) (citing *Wasilewiski); Ripon Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 826 (Feb. 14, 2023); *Appleton Area Sch. Dist. Bd. of Educ.*, Decision and Order No. 820 (Nov. 15, 2022); *Goodman-Armstrong Creek Sch. Dist. Bd. of Educ.*, Decision and Order No. 787 (Dec. 16, 2019). The record does not contain any evidence to rebut this presumption.

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 Darlington Community School District Board of Education is affirmed.

Dated this 13 day of September, 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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COPIES MAILED TO:

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