STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0546

Re: Expulsion Appeal File 22-04-E on behalf of W. M.
from East Central Public Schools 2580.

Filed February 21, 2023
Appeal dismissed
Johnson, Judge

Minnesota Department of Education
File No. 22-04-E

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Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A high school student was expelled in the middle of his senior year. He pursued an administrative appeal to the commissioner of education, who reversed the expulsion. The school district sought judicial review of the commissioner's decision in this court. Before the parties submitted their appellate briefs, the student graduated from high school. We

conclude that the appeal is moot and that none of the exceptions to the mootness doctrine apply. Therefore, we dismiss the appeal.

FACTS

East Central High School is located in Pine County and serves the communities of Sandstone, Askov, and Finlayson. On December 10, 2021, the school conducted a pre-planned lockdown drill. A twelfth-grade student, W.M., was in a welding classroom with a teacher and other students, all of whom took shelter in a storage area in the back corner of the welding shop. During the drill, W.M. was intrigued by flashing green lights and used his cellphone to record a video of the lights. He edited the video and posted it to the Snapchat social-media platform with a caption: "it's a mf rave." The Snapchat post included an audio-recording of a voice on a school-wide intercom system and another voice of a person standing near W.M., who happened to be his teacher, saying, "it might make the shooter pissed off."

Soon thereafter, a student at a nearby high school saw and heard the Snapchat post. The student, who knew W.M., believed that there was an active shooter at W.M.'s high school. The student reported the Snapchat post to the principal of his high school, who reported it to the local police department, which dispatched officers to East Central High School. Meanwhile, police officers called the principal of East Central High School, who then ordered a second lockdown. When police officers arrived at East Central High School, they performed a protective sweep to ensure that there was not a dangerous situation in the building. Police officers handcuffed W.M. and placed him in the back seat of a squad car,

which was parked in front of the high school and was visible to concerned parents who had gone to the school. W.M. was held in the county jail for three days before being released.

On December 28, 2021, the superintendent of the East Central School District gave notice to W.M. and his parents pursuant to the Pupil Fair Dismissal Act (PFDA), Minn. Stat. §§ 121A.40-.575 (2022), that the school district was initiating an action to expel W.M. for 12 months. The notice stated three grounds for the proposed expulsion: (1) a willful violation of the school board's regulations, (2) willful conduct that caused a significant disruption, and (3) willful conduct that endangered others. *See* Minn. Stat. § 121A.45, subd. 2.

On January 11, 2022, W.M., who was represented by an attorney, participated in a hearing conducted by an independent hearing officer. The school district called five witnesses and introduced ten exhibits. W.M. called two witnesses and introduced three exhibits. On January 13, 2022, the hearing officer issued a 13-page order recommending that W.M. be expelled for 12 months based on the second and third grounds stated in the school district's notice. On January 18, 2022, the school board issued a two-page written decision adopting the hearing officer's recommendation, with slight modifications. The school board expelled W.M. until January 17, 2023.

W.M. pursued an administrative appeal of the school board's decision to the state department of education. *See* Minn. Stat. § 121A.49. On March 21, 2022, the commissioner of education issued a 36-page decision. The commissioner noted that, in *In re Expulsion of A.D.*, 883 N.W.2d 251 (Minn. 2016), the supreme court stated that there is no endangerment if "the risk and possibility of harm is too tenuous to constitute substantial

evidence of endangerment." *See id.* at 263. The commissioner reasoned that, in this case, "the mere action of posting a video referencing a rave is not inherently dangerous" and that there was "too tenuous a connection" between W.M.'s "choice to make a video about a rave and post it to social media" and any resulting disruption or endangerment and, thus, an inadequate basis to "hold [W.M.] responsible for the risk and possibility of disruption or danger from the police response." Accordingly, the commissioner concluded that the school board's decision was based on an error of law and that, under a proper view of the law, there was not substantial evidence to support the school board's decision. The commissioner also concluded that W.M.'s expulsion hearing was based on unlawful procedure because the hearing officer did not compel the testimony of the student who saw W.M.'s Snapchat post and the principal of the other high school who reported the matter to police. Ultimately, the commissioner reversed the expulsion and required the school district to "immediately enroll [W.M.] as a student in good standing." The commissioner imposed conditions on the school district in the event that it again chose to pursue W.M.'s expulsion. The commissioner also stated, "The portion of [W.M.]'s record referring to the expulsion and the district's unlawful dismissal of [W.M.] from school must be expunged from [W.M.]'s record within 15 calendar days of the date of this decision."

On April 19, 2022 (29 days after the commissioner's decision), the school district filed a petition for writ of certiorari with the clerk of appellate courts to seek judicial review of the commissioner's decision. *See* Minn. Stat. § 121A.50. No party to the appeal requested that the appeal be expedited. *See* Minn. App. Spec. R. Prac. 1; Minn. R. Civ. App. P. 127. On June 3, 2022, W.M. graduated from East Central High School and

received his diploma. The school district and W.M. submitted their respective briefs between June 20 and August 3, 2022, and the court heard oral arguments in December 2022.[1]

DECISION

The school district argues that the commissioner erred by reversing its expulsion decision. Specifically, the school district argues that the commissioner misapplied the PFDA's "willful conduct" standard, engaged in impermissible fact-finding, and wrongly concluded that the school district violated W.M.'s procedural rights.

In his responsive brief, W.M. first argues that this court should dismiss the school district's appeal on the ground that the appeal is moot because he has graduated from East Central High School. W.M. also argues in the alternative that the commissioner's decision is correct and should be affirmed.

In its reply brief, the school district argues that the appeal is not moot on the ground that "there is still an active controversy as to whether the school district must modify its records to change whether W.M. was expelled." The school district argues in the alternative that three exceptions to the mootness doctrine apply.

We begin by considering the issue of mootness.

[1]Oral argument initially was scheduled for a date in early October 2022. But the event twice was postponed because attorneys self-reported COVID-19 symptoms and requested that oral argument be rescheduled.

A. Mootness

As a general rule, appellate courts "decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). If an event has occurred while an appeal is pending, and if the event makes "a decision on the merits unnecessary or an award of effective relief impossible, the appeal will be dismissed as moot." *In re Inspection of Minnesota Auto Specialties, Inc.*, 346 N.W.2d 657, 658 (Minn. 1984); *see also Housing & Redevelopment Auth. ex rel. City of Richfield v. Walser Auto Sales, Inc.*, 641 N.W.2d 885, 888 (Minn. 2002). The key question is whether "'a decision on the merits is no longer necessary or an award of effective relief is no longer possible.'" *State ex rel. Ford v. Schnell*, 933 N.W.2d 393, 401 (Minn. 2019) (quoting *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015)). That standard is not met if "the controversy is no longer of any practical significance." *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997).

To determine whether there is a live controversy, we look to the law governing the parties' dispute, the decision under review, and the appellant's request for relief. *See id.*; *Mertins v. Commissioner of Natural Resources*, 755 N.W.2d 329, 334 (Minn. App. 2008). The general policy of the PFDA, as stated by the legislature, is that "[n]o public school shall deny due process or equal protection of the law to any public school pupil involved in a dismissal proceeding which may result in suspension, exclusion, or expulsion." Minn. Stat. § 121A.42. The act ensures that a student is not dismissed from school except for certain specified reasons. Minn. Stat. § 121A.45, subd. 2. The act allows a student to appeal a school board's dismissal decision to the commissioner of education, who may,

among other things, "reverse or modify the decision if the substantial rights of" a student "have been prejudiced" by an error of law. Minn. Stat. § 121A.49. But the act does not contain any provision governing the retention or expungement of a school district's records of a dismissal. *See* Minn. Stat. §§ 121A.40-.575.

The decisions underlying this appeal are either exclusively concerned or primarily concerned with whether W.M. should be expelled, not with the records of his expulsion. Whether W.M. should be expelled is the sole focus of the decisions of the hearing officer and the school board. The primary purpose of the commissioner's order was to reverse W.M.'s expulsion and require the school district to reinstate him as a student. The commissioner's order also instructed the school district to expunge the dismissal from its records, but that part of the commissioner's order is a natural corollary to the commissioner's decision to reverse the expulsion and to require W.M.'s reinstatement.

In the conclusion of its principal brief—which was filed more than two weeks after W.M.'s graduation—the school district requested the following relief on appeal: "the [commissioner's] decision should be reversed and the board's decision to expel W.M. based on his willful conduct should be reinstated." At that stage of the appeal, the school district did *not* ask this court to reverse that part of the commissioner's order that requires the school district to expunge its records of W.M.'s expulsion.

Consequently, the issue presented by this appeal is whether the commissioner correctly decided that the school district violated W.M.'s rights under the PFDA and correctly decided that he should not have been expelled and instead should be reinstated as a student. W.M. was reinstated, and he has graduated from high school. Because he has

graduated, it is no longer necessary to determine whether his rights under the PFDA were violated and whether he should have been reinstated. Whether the school district must expunge its records of W.M.'s expulsion is not a matter "of any practical significance." *See Minnegasco*, 565 N.W.2d at 710.

The school district cites two opinions from another jurisdiction in which courts determined that appeals concerning student discipline were not moot after a student had graduated or after a disciplinary period had expired. *See Henry Cnty. Bd. of Educ. v. S.G.*, 804 S.E.2d 427, 430 n.1 (Ga. 2017) (concluding that student's appeal of expungement was not moot despite her having graduated); *Fulton Cnty. Bd. of Educ. v. D.R.H.*, 752 S.E.2d 103, 109 (Ga. Ct. App. 2013) (concluding that trial court correctly determined that student's appeal of expulsion was not moot despite expulsion period having expired). But in each of these two cases, the student—not the school—sought judicial review of an expulsion. *See S.G.*, 804 S.E.2d at 430 & n.1; *D.R.H.*, 752 S.E.2d at 108-09. In each case, the court reasoned that the case was not moot because the student was entitled to a review of the determination of misconduct. *S.G.*, 804 S.E.2d at 430 n.1; *D.R.H.*, 752 S.E.2d at 109. One court expressly reasoned that "a determination of misconduct on a student's school record carries . . . consequences, particularly as it concerns future school discipline or the ability of a student to obtain employment or enter an institution of higher learning later in life." *D.R.H.*, 752 S.E.2d at 109.[2]

[2]The school district cites one other opinion from a foreign jurisdiction, but it is either not on point or not helpful to the school district. In *Massengill v. Bd. of Educ., Antioch Cmty. High Sch.*, 88 F.R.D. 181 (N.D. Ill. 1980), a putative class action challenged a school's disciplinary policies. *Id.* at 183. The district court denied a motion for class

A student's interest in overturning a disciplinary decision is very different from a school's interest in upholding a disciplinary decision. More importantly, a student's interest in overturning a disciplinary decision is very different from a school's interest in retaining records of a disciplinary decision concerning a student who has graduated and will not again be enrolled in the school. In this case, the school district has not identified any tangible benefit to the school district that might arise from its retention of records concerning the expulsion of a student who has graduated. The PFDA, which governs this matter, contains no provision that gives a school district a right to retain records of disciplinary decisions. The purpose of the PFDA is to ensure that students are not wrongfully expelled and, if they are, to ensure that they are reinstated. The school district's abstract interest in retaining records of its expulsion decision is not a valid reason for deciding the merits of this appeal.

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certification on the ground that the named plaintiffs (a suspended student and his mother) were not adequate class representatives because neither met "the high level of responsibility imposed on every class representative," neither was sufficiently "capable" and "responsible," and neither "manifested the requisite ability to represent the class or pursue this litigation with diligence." *Id.* at 185. In a footnote, the district court rejected the school's argument that the student's subsequent expulsion from the school made him an inadequate representative, noting that the existence of records of a disciplinary action may prevent an action from becoming moot because of the possibility of collateral consequences "that could possibly harm the student in the future." *Id.* at 185 n.4. The non-mootness rationale was not essential to the district court's denial of the motion for class certification. In any event, the district court's statement assumes that a claim is being pursued by a student, not by a school. *See id.*

Thus, this appeal is moot because "a decision on the merits is no longer necessary" and "an award of effective relief is no longer possible." *See Ford*, 933 N.W.2d at 401 (quotation omitted).[3]

B. Exceptions

As stated above, the school district argues, in the alternative, that three exceptions to the mootness doctrine apply. We will consider each exception in turn.

1. Functionally Justiciable and Statewide Significance

The school district first argues that this court should invoke the exception for appeals that are functionally justiciable and of statewide significance. An appellate court may consider the merits of an appeal that is technically moot if it "is 'functionally justiciable' and presents an important question of 'statewide significance that should be decided immediately.'" *Dean*, 868 N.W.2d at 6 (quoting *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984)). An appeal is functionally justiciable if "the record contains the raw material traditionally associated with effective judicial decision-making, including a full presentation of both sides of the issues raised." *Ford*, 933 N.W.2d at 403-04. An appeal has statewide significance if "it involves an issue of public concern and further harm could occur if the court were to wait for a future case to present the issue." *Geyen v.*

[3]Our conclusion is consistent with this court's conclusion in another appeal concerning the rights of a student who had graduated. In *Goeden v. Minnesota State High Sch. League*, No. A21-0014, 2021 WL 3611458 (Minn. App. Aug. 16, 2021), the Minnesota State High School League appealed a temporary restraining order that enjoined the league from enforcing a bylaw that would have prevented a student-athlete from participating in sports during his senior year of high school. *Id.* at *1. The student-athlete graduated from high school during the pendency of the appeal. *Id.* at *2. The parties agreed that the appeal was technically moot, and this court agreed as well. *Id.*

Commissioner of Department of Human Services, 964 N.W.2d 639, 650 (Minn. App. 2021); *see also Snell v. Walz*, ____ N.W.2d ____, ____, 2023 WL 1807743, at *5 (Minn. Feb. 8, 2023).

The parties focus their arguments on the second part of the exception: whether the appeal presents an issue of statewide significance. The school district contends that the appeal presents such an issue because the commissioner incorrectly interpreted the statute and the applicable caselaw. W.M. contends that there is no such issue because the appeal "presents a highly unique set of facts."

We agree with W.M. that this appeal does not contain "an important question of 'statewide significance that should be decided immediately.'" *See Dean*, 868 N.W.2d at 6 (quoting *Rud*, 359 N.W.2d at 576). This appeal is unlike the appeal in *Rud*, in which the supreme court considered moot issues under this exception because "a failure to decide them now could have a continuing adverse impact in other criminal trials if trial judges were to rely on the Court of Appeals' decision." 359 N.W.2d at 576. To the contrary, any other cases of this type likely can be resolved by applying the supreme court's opinion in *A.D.*, which interpreted the same statutory provisions that are discussed in the parties' briefs in this case. *See* 883 N.W.2d at 256-63. Thus, this exception does not apply.

2. Capable of Repetition Yet Evading Review

The school district next argues that this court should invoke the exception for appeals that are capable of repetition yet likely to evade review. This exception may apply if "'(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same

complaining party would be subjected to the same action again.'" *Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). "Both elements of the doctrine must be met." *Snell*, 2023 WL 1807743, at *7 n.6.

The school district argues that this exception applies because "the expulsion period was too short to be fully litigated." W.M. argues that expulsion decisions usually are unlikely to evade review because most expulsions do not occur so close to a student's graduation and because expedited review is available if necessary.

We believe that it is unlikely that the same complaining party—the school district—will again be subjected to the same action—a decision by the commissioner reversing an expulsion decision based on similar circumstances. As an initial matter, we note that the events of December 10, 2021, were very unusual and are unlikely to be repeated at East Central High School or at any other school in the school district. In the unlikely event that they were to reoccur, there is no particular reason to believe that the school board will again expel a student and no particular reason to believe that the commissioner again will reverse the expulsion. In addition, it is unlikely that any expelled student will be as close in time to graduation as was W.M. Thus, the second requirement of this exception is not satisfied.

3. Collateral Consequences

The school district last argues that this court should invoke the exception for appeals of decisions that may have collateral consequences. Under this exception, an appeal will not be dismissed as moot if an appellant will suffer collateral consequences from the underlying judgment. *McCaskill*, 603 N.W.2d at 329.

The school district contends that it will face collateral consequences because, if the appeal is dismissed as moot, it will be required to comply with the commissioner's order that the school district expunge its records of W.M.'s expulsion. For the reasons that are stated above in part A, that consequence is not one with "real and substantial disabilities." *See id.* (quotation omitted). The school district contends that it is adversely affected because "the school board felt it was important to respond to the extreme disruption caused by W.M.'s actions with an expulsion" but the commissioner's decision "negates this response and sends a message that students can avoid consequences for extremely disruptive behavior." This contention appears to suggest that the school district might use its records of W.M.'s expulsion to deter future misbehavior. But the school district has a duty to maintain the privacy of educational data relating to W.M. *See* Minn. Stat. § 13.32, subd. 3 (2022). The school district cannot disclose such data to anyone except W.M., who has graduated and has no interest in the data. Thus, this exception also does not apply.

In sum, we conclude that the appeal is moot and that none of the exceptions to the mootness doctrine apply. Accordingly, we dismiss the appeal.

Appeal dismissed.