

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

R [REDACTED] H [REDACTED]

by Waunakee Community School District
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-5

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 Waunakee Community School District Board of Education (“board of education”) to expel the above-named pupil from the Waunakee Community School District (“school district”). This appeal was filed by the pupil’s father (“appellant”) and received by the Department of Public Instruction on June 26, 2015.

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).

FINDINGS OF FACT

On February 13, 2015, the pupil and Student B, both males enrolled as 9th graders in the Waunakee Community High School, were passengers on a school bus. The school bus was dropping students off on its after school route. Student C, a female enrolled as an 8th grader in the Waunakee Community Middle School, was also a passenger on the bus. Student C shared a

seat with a female friend. After student C's friend left the bus, the pupil and Student B quickly moved to sit in the same seat as Student C. The pupil and Student B then restrained Student C and molested her.

Student C shared what happened with two other students, who then reported the information to a school counselor. The middle school principal subsequently conducted an investigation and interviewed Student C. School administrators also reported the incident to law enforcement.

On March 4, 2015, the school district began the expulsion process by mailing a "Notice of Expulsion Hearing." The letter advised that the hearing officer would hold a hearing on March 12, 2015, that could result in the pupil's expulsion from the school district through the pupil's 21st birthday. The letter was sent separately to the pupil and both of his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil "... together with another male student restrained a female student in a seat on the school bus and touched her on her legs, thighs, near her genital area and/or her breasts."

The hearing was held in closed session before a hearing officer on March 12, 2015. The pupil and his parents appeared at the hearing with counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents, through their attorney, were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. After the hearing, the parties agreed to a briefing schedule. Both parties submitted post-hearing briefs.

On May 29, 2015, the hearing officer issued his decision. The hearing officer found that the pupil did engage in conduct which constitutes grounds for expulsion under Wis. Stat. § 120.13(1)(c)(1) and the interest of the school demands the expulsion of the pupil. The hearing officer's order stated that the pupil was expelled through his 21st birthday with conditional reinstatement in January 2017. On June 5, 2015, the pupil's father requested a transcript of the hearing officer's hearing. The school district provided a copy.

The school board convened on June 8, 15, and 16 to review the hearing officer's decision and the full record. The school 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 June 16, 2015, was mailed separately to the pupil and his parents. The school board's order stated the pupil was expelled through his 21st birthday. However, it modified the hearing officer's conditional reinstatement provisions. Specifically, the order grants the pupil conditional reinstatement at the school district's alternative school or e-school for the first semester of the 2015-2016 school year. Then, the pupil is granted conditional reinstatement to the main campus of the high school in the second semester for the 2015-2016 school year. The pupil's reinstatement is contingent on the pupil meeting various requirements, including participating in counseling. A transcript of the expulsion hearing, a videotape from the bus, and written briefs are part of the record.

DISCUSSION

The expulsion statute –Wis. Stat. § 120.13(1)(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 district demand the pupil's expulsion.

The appeal letter in this case raises four issues which require consideration. First, the appellant argues that the expulsion order should be reversed because four people testified at the expulsion hearing, but the hearing officer only mentioned one person's testimony in his order. This argument has no merit. It was within the hearing officer's discretion to give weight to the evidence and arguments, as he deemed appropriate, and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W.2d 689 (1976); *D.S. by Nicolet Union High School Dist.*, (702) January 18, 2013. As such, it was well within the hearing officer's discretion to focus his decision on one person's testimony and not the other witnesses' testimony. There is no requirement that a hearing officer must mention or discuss every person's testimony in his or her decision. Further, even if this allegation did have merit, the school board reviewed the entire record over the course of three meetings before it affirmed the hearing officer's decision. As such, it cannot be said that the hearing officer's omission deprived the school board of an accurate account of the expulsion hearing.

Second, the appellant alleges that he was the only person to receive a copy of the expulsion hearing transcript. According to the expulsion statute, a transcript is required only *upon request*. Wis. Stat. § 120.13(1)(e)4.f. The appellant was the only person to request a transcript, and the school district provided him with a copy. Therefore, no procedural violations occurred in regard to the expulsion hearing transcript.

Third, the appellant alleges that the pupil and his mother did not receive a copy of the hearing officer's order.¹ However, the record indicates that school district did mail the order to each person. Specifically, the superintendent's assistant states in an affidavit that she mailed a copy of the order to the pupil and each of the pupil's parents.² Further, the mother's written submission to the school board contained numerous references to the hearing officer's decision, thus indicating she received the decision. Therefore, no procedural violation occurred.

Fourth, the appellant alleges that the 78 day period between the expulsion hearing and the issuing of the hearing officer's order was excessively long. Violations of suspension law are outside the scope of the state superintendent's review. *T.J. by the Wittenberg-Birnamwood School Dist.*, (717) May 21, 2014, citing *Madison Metro. Sch. Dist. v. Wisconsin Dep't of Pub. Instruction*, 199 Wis. 2d 1, 13, 543 N.W.2d 843, 848 (Ct. App. 1995). Additionally, there is a very good reason for the 78 day delay: the parties requested the opportunity to submit post-hearing briefs, they also agreed to extend the briefing deadlines, and they stipulated that the pupil would remain out of school and receive educational services for the duration of the expulsion process. As such, the appellant waived this claim and is estopped from raising it now.

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

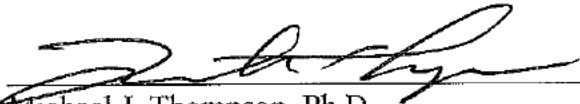
¹ The pupil's parents are divorced and have separate residences.

² I encourage school districts to prepare affidavits of mailing at the time an expulsion decision and order is issued in order to document compliance with the expulsion statute.

ORDER

IT IS THEREFORE ORDERED that the expulsion of R [REDACTED] H [REDACTED] by the Waunakee School District Board of Education is affirmed.

Dated this 7th day of August, 2015

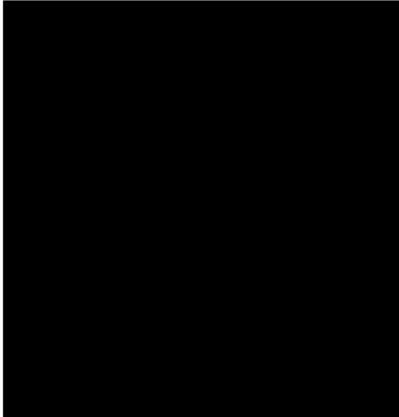


Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

APPEAL RIGHTS

Wis. Stat. § 120.13(1)(e) 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:



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