

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J ■■■ I ■■■

by Kettle Moraine School District
Board of Education

DECISION AND ORDER

Appeal No.: 15-EX-09

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 Kettle Moraine School District Board of Education to expel the above-named pupil from the Kettle Moraine School District. This appeal was filed by the pupil's parents ("Appellants") and received by the Department of Public Instruction on November 11, 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). The state superintendent's role is to ensure that the required statutory procedures were followed, that the school board's decision was based upon one or more of the established statutory grounds, and that the school board was satisfied that the interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The pupil's expulsion is the result of the student breaking and entering into the Wales Elementary School in the early morning hours of July 9, 2015. The pupil admitted to this behavior during an interview on August 27, 2015. The pupil's parents were present at this interview.

The record contains a letter entitled "Notice of Expulsion Hearing," dated September 2, 2015. The letter advised that a hearing would be held on September 14, 2015, that could result in the pupil's expulsion from the Kettle Moraine School District through until his 21st birthday. The letter was sent separately to the pupil and his parents by certified and regular mail. The Certified Mail was not claimed, but the regular mail was not returned to the school. The letter alleged that the pupil engaged in conduct while not at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged the pupil engaged in and admitted to breaking and entering at Wales Elementary School in the early morning hours of July 9, 2015, which endangered district property. An amended letter was sent on September 2, 2015, which alleged an additional ground for expulsion, but the school district did not pursue that allegation at hearing.

The hearing was held in closed session on September 14, 2015. The pupil's father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's father was 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 school board found that the pupil did engage in conduct while not 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 student's expulsion. The order for expulsion

containing the findings of fact and conclusions of law of the school board, dated September 15, 2015, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through until his 21st birthday. A transcript of the expulsion hearing is part of the record.

DISCUSSION

There is a strong tradition of local rule in this state when it comes to education decisions. Appeals of expulsions are limited to a review of process required under that statute. The Department's review of an expulsion order under Wis. Stat. § 120.13(1)(c)3. is generally intended only to ensure the school board filed the statutory procedures of Wis. Stat. § 121.13(1)(c). See Racine Unified School Dist. v. Thompson, 107 Wis. 2d 657, 321 N.W.2d 334 [Ct. App. 1982]. The entire appeal letter in this matter is focused on the pupil's medical and behavioral diagnoses, and the parents are disagreeing with the conduct and outcome of the pupil's manifestation determination meeting prior to the expulsion. These issues are outside the scope of the appeal of the expulsion.¹ An expulsion appeal is not the proper forum to challenge the district's compliance with special education laws with respect to the manifestation determination meeting that was held. Ernesto G. by the Waukesha School Dist., (200) Dec. 14, 1992; Jason G. by the Greenfield School Dist., (364) June 12, 1998. The Superintendent does not have the authority in an expulsion appeal to examine the conduct of a manifestation determination meeting. Brian M. by the Lodi School Dist. (425) Oct. 23, 2000. There are

¹ Although not raised in the appeal letter, a review of the hearing transcript reveals that the father also argued at hearing that the notification of the expulsion hearing did not comply with statutory requirements in that he disagreed that the school gave him notice of the particulars of the alleged conduct upon which the expulsion was based. Although the appeal letter does not address this matter, a review of the record demonstrates that the district did list the particulars in that they stated the expulsion was based on the pupil's July 9, 2015 breaking and entering and his admission of said behavior, which is more than enough to identify what behavior was at issue.

separate procedures under federal and state law for special education appeals.² Therefore, this appeal must be dismissed as the appeal does not raise any reviewable issues.


CONCLUSIONS OF LAW

This appeal is dismissed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of J [REDACTED] I [REDACTED] by the Kettle Moraine School District Board of Education stands.

Dated this 8th day of December, 2015



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

² The School District informed the parents that an appeal of the manifestation determination was a different procedure than the expulsion hearing. The Department's legal counsel via telephone informed the parents that the appeal of the expulsion was not the proper venue to dispute a manifestation determination and that a complaint could be filed under the IDEA laws with the special education program. The Department's Special Education team confirmed that a member also discussed the procedure for filing a complaint regarding the manifestation determination under the IDEA laws with the pupil's parents via telephone. An appeal may still be filed for a year after the alleged issue occurred. See https://sped.dpi.wi.gov/sped_complain.

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:



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