

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

S [REDACTED] E [REDACTED]

by Washington Island School District
Board of Education

DECISION AND ORDER

Appeal No.: 17-EX-07

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 Washington Island School District Board of Education (School Board) to expel the above-named pupil from the Washington Island School District (District). This appeal was filed by the pupil's parent and received by the Department of Public Instruction on September 8, 2017.

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)(e).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated January 23, 2017, from the district administrator of the Washington Island School District. The letter advised that a hearing would be held on January 30, 2017 that could result in the pupil's expulsion from the Washington Island School District through the pupil's 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 not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. The letter specifically alleged that in December of 2016 and January of 2017, the pupil on multiple occasions entered the Washington Island School outside of school hours and stole money and other school property from various sources within the school.

The hearing was held in closed session before an independent hearing officer on January 30, 2017. The pupil and his parent appeared at the hearing without counsel. At the hearing, the district administration presented evidence concerning the grounds for expulsion. The pupil and his parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

On February 7, 2017, the independent hearing officer issued a decision. The hearing officer found that the pupil did engage in conduct which constitutes grounds for expulsion under Wis. Stat. § 120.13(1)(c) and that the interest of the school demands the pupil's expulsion. The hearing officer's order stated that the pupil was expelled until June 15, 2018, with the possibility of conditional early reinstatement upon completion of, and ongoing compliance with, conditions articulated in the decision. The order of expulsion was mailed separately to the pupil and the pupil's parent, received on February 10, 2017.

On February 23, 2017, the School Board reviewed the independent hearing officer's decision. The School Board accepted the findings of the hearing officer with two modifications to the conditions of early reinstatement. A transcript of the expulsion hearing, hearing exhibits, minutes of the board meeting accepting the expulsion order with modifications, and written post-hearing briefs are part of the record for purposes of this appeal.

Following the appeal, the pupil was granted conditional early reinstatement effective April 2017. On August 1, 2017, conditional early reinstatement was revoked because the pupil did not satisfy one of the conditions for early reinstatement. The original expulsion term through June 15, 2018, was then enforced.

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 and briefs in this case raises five issues which require consideration. First, the appellant claims that the District was complicit in the pupil’s conduct by creating conditions sufficient for the pupil to steal money and property from the school. The hearing record presents sufficient evidence for the independent hearing officer and school board to reasonably conclude that on multiple occasions, the pupil entered the school building, retrieved keys to a cash box, and stole money and property from the school. These findings sufficiently establish statutory grounds for expulsion under Wis. Stat. § 120.13(1)(c). *See J.L. by the Kettle Moraine Sch. Dist. Bd. of Educ.*, (732) Dec. 8, 2015. Whether the school could have or should have done more to prevent the behavior is reasonably debatable, but this question is not appropriate for purposes of this appeal.

Second, the appellant argues the School Board was disqualified from hearing this matter because the District's administration met with the School Board prior to the expulsion hearing. The record in this matter indicates that the expulsion hearing was not before the School Board, but was instead before an independent hearing officer. Pursuant to Wis. Stat. § 120.13(1)(e), the independent hearing officer appropriately served as the finder of fact, resolved conflicts and testimony, interpreted facts, and weighed evidence and arguments. *Aaron R. by D. C. Everest Sch. Dist. Bd. of Educ.*, (472) July 18, 2002. The appeal does not allege any violation of due process during the hearing, the hearing record does not indicate the independent hearing officer engaged in any inappropriate ex parte communications with District administrators, and there is no evidence the board was unduly influenced in deciding to adopt the hearing officer's proposed order.

Third, the appellant alleges the pupil was discriminated against during the expulsion process on the basis of race. Allegations of discrimination on the basis of race are typically beyond the scope of an expulsion appeal. Instead, allegations of discrimination are subject to the procedures and requirements contained in Wis. Stat. § 118.13 and Wis. Admin. Code ch. 9. *D.N. by the Germantown Sch. Dist. Bd. of Educ.*, (586) Feb. 6, 2007; *Andrew K. by Southern Door Cty. Sch. Dist. Bd. of Educ.*, (476) Aug. 1, 2002.

Fourth, the appellant argues that the District's expulsion order is punitive, fails to take into account mitigating circumstances, and imposes a hardship on the pupil and the pupil's family. The state superintendent has consistently held that it would be inappropriate, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. *J.L. by Hortonville Area Sch. Dist. Bd. of Educ.*, (724) Mar. 31, 2015; *T.J. by Wittenberg-Birnamwood Sch. Dist. Bd. of Educ.*, (718) May 21, 2014; *A.M. by the West Allis-West Milwaukee School Dist.*, (703) February 18, 2013. In reviewing this case, it is

clear that the pupil's expulsion creates a hardship for a family already experiencing significant challenges. However, Wis. Stat. § 120.13(1)(e) provides substantial deference to local school boards to determine whether the interest of the school district demands an expulsion as long as statutory grounds for expulsion have been established. As such, there are no procedural violations or other extraordinary circumstances present that would allow a modification of the pupil's expulsion on appeal, and so the board's decision must be upheld. *J.L. by Hortonville Area Sch. Dist. Bd. of Educ.*, (724) Mar. 31, 2015; *T.J. by Wittenberg-Birnamwood Sch. Dist. Bd. of Educ.*, (718) May 21, 2014.

Finally, the appellant argues that the pupil's conditional early reinstatement conditions articulated by the expulsion order should not have been revoked because the pupil completed most of the requirements and the School Board failed to take into account a number of extenuating circumstances. Pursuant to Wis. Stat. § 120.13(1)(h)6, the district's determination that the conditions of readmission were violated are final and not subject to appeal. *A.O. by Hudson Sch. Dist. Bd. of Educ.*, (570) Mar. 27, 2006. This decision is statutorily assigned exclusively to the local control of the School Board. Though the decision to revoke the pupil's conditional early reinstatement over what appears to be seven hours of disputed community service is morally and ethically questionable, this decision is outside the scope of this appeal.

It is worth noting that once the period of the expulsion term expires, the pupil's readmission to the school district must be unconditional, meaning previous conditions of early reinstatement become unenforceable. *Lori L. by Baraboo Sch. Dist. Bd. of Educ.*, (227) Apr. 22, 1994. The expulsion term expires June 15, 2018.


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 §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of S [REDACTED] E [REDACTED] by the Washington Island School District Board of Education is affirmed.

Dated this 7 day of November, 2017



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

Parties to this appeal are:



Mati Palm-Leis
District Administrator
Washington Island School District
888 Main Road
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APPEAL RIGHTS

Wis. Stats. § 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 § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

COPIES MAILED TO:



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