

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>R [REDACTED] B [REDACTED]</p> <p>by Racine Unified School District Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 18-EX-15</p> |
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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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 11, 2018.

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 § 120.13(1)(e).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," sent from the Principal of Schulte Elementary School originally dated April 13, 2018, and then revised on April 17, 2018, and April 19, 2018. The letter advised that a hearing would be held by an Independent Hearing Officer on May 1, 2018, that could result in the pupil's expulsion from the Racine Unified School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents

by 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. Specifically, the letter alleged that the pupil brought a facsimile butterfly knife to school and threatened another student with the knife.

The hearing was held on May 1, 2018, in front of the Independent Hearing Officer. 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 were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the Independent Hearing Officer 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 Independent Hearing Officer further found that the interests of the school demand the pupil's expulsion. The Independent Hearing Officer issued an order for expulsion containing findings of fact, dated May 1, 2018 (the Order), which was mailed to the pupil and the pupil's parents. The Racine Unified School District School Board reviewed the Order on May 21, 2018, and affirmed the Order in all respects. An audiotape of the expulsion hearing and hearing exhibits are included in the hearing 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 district demand the pupil's expulsion.

The appeal in this case raises three issues that require consideration. First, pupil's counsel asserted at the hearing that the district improperly refused to disclose the names of student witnesses to the pupil. The state superintendent has repeatedly determined that a pupil is not entitled to learn the identity of student witnesses prior to an expulsion hearing. *K.W. by Racine Unified Sch. Dist.*, (705) July 30, 2013; *Luke D. by Durand Sch. Dist.*, (483) Feb. 14, 2003; *Timothy W. by the Greenfield Sch. Dist.*, (315) Mar. 21, 1997; *Nicholas K. by the Hudson Sch. Dist.*, (305) Dec. 5, 1996. Furthermore, a pupil does not have the right to confront student witnesses against him in an expulsion hearing, including witness statements submitted at the hearing in writing. *Id.*, See also, *Courtney R. by the Germantwon Sch. Dist.*, (278) Mar. 21, 1996; *William S. by the Tri-County Area Sch. Dist.*, (132) June 21, 1985. Therefore, the district's refusal to disclose the names of student witnesses to the pupil does not provide grounds to overturn the expulsion.

Second, the appeal letter asserts that the district prohibited witnesses from attending the hearing, including student witnesses and a teacher. The letter implies the district stationed a police officer outside of the hearing room to prevent witnesses from attending. There is no evidence in the hearing record that the district barred any witness from attending the hearing, other than the above-discussed assertion that the district refused to disclose the identities of student witnesses. At no point during the hearing do the pupil, the pupil's parents, or the pupil's counsel indicate to the Independent Hearing Officer that the district was attempting to prevent a witness from testifying, through intimidation or otherwise. There is insufficient evidence on the record to overturn the expulsion on this basis.

Finally, the appeal asserts the district denied the appellants the opportunity to meet with the district superintendent for a “pre-expulsion meeting.” There is no statutory or due process requirement that a district hold a pre-expulsion meeting. At the hearing, counsel for the pupil made reference to language in Wis. Stat. § 120.13(1)(b)4. as providing students with the right to a pre-expulsion meeting. However, that statute provides rights in connection with suspension - a suspended pupil may request a conference with the school district administrator or designee to determine whether the *suspension* was appropriate. The state superintendent has no authority to review suspensions or compliance with Wis. Stat. § 120.13(1)(b), and that statute does not provide any right to a meeting to discuss a pending expulsion. *Madison Metro. Sch. Dist. v. Wisconsin Dep’t of Pub. Instruction*, 199 Wis. 2d 1, 14, 543 N.W.2d 843 (Ct. App. 1995); *Chelsea N. by Appleton Area Sch. Dist.*, (530) Jan. 28, 2005. The expulsion cannot be overturned on this basis.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

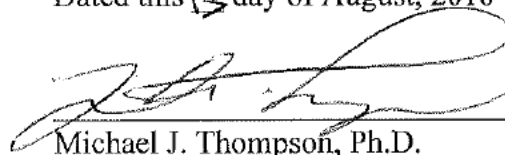
CONCLUSIONS OF LAW

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 §120.13(1)(c).

ORDER

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

Dated this 13 day of August, 2018



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

Parties to this appeal are:



Eric Gallien
District Administrator
Racine Unified School District
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APPEAL RIGHTS

Wis. Stats. § 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 § 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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