

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J ■■■ A ■■■■

by Racine Unified School District
Board of Education

DECISION AND ORDER

Appeal No.: 18-EX-21

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 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 November 15, 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)(c).

FINDINGS OF FACT

The record contains a letter entitled "Notice of Expulsion Hearing," dated August 30, 2018, signed by an academy principal for the Racine Unified School District. The letter advised that a hearing would be held on September 7, 2018, that could result in the pupil's expulsion from the Racine Unified School District through 21st birthday. The letter was sent separately to the pupil and his parent 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 on May 8, 2018, the pupil was in possession of approximately 6-8 individually packaged bags of marijuana, a digital scale with marijuana residue, and other drug paraphernalia.

The hearing was held on September 7, 2018, in front of an independent hearing officer appointed by the school board pursuant to Wis. Stat. § 120.13(1)(e). The pupil's parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil's parent was given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing officer issued a decision and order for expulsion dated September 7, 2018, directing the pupil be expelled from the Racine Unified School District until his 21st birthday. The 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 hearing officer further found that the interests of the school demand the pupil's expulsion. The decision and order was mailed separately to the pupil and the pupil's parent.

On September 24, 2018, the school board met in closed session to review the decision and order. The school board affirmed the decision and order in all respects. The school board's decision was mailed separately to the pupil and the pupil's parent on September 26, 2018.

The above-referenced notices, decision and order, the school board's approval of the decision and order, an audio recording of the hearing, and the hearing exhibits are all part of the 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 interests of the school demand the pupil’s expulsion.

The appeal letter in this case raises three issues which require consideration. First, the appellant asserts that the school district did not provide the notice of expulsion five days prior to the hearing. In order for an expulsion notice to be timely, it must be sent no less than five days before the hearing. Wis. Stat. § 120.13(1)(c)(4). “Sent” is not the same as received. *D. S. by the Merrill Area School Dist.*, (682) May 16, 2011. These five days include weekends and holidays. *M. H. by the Clinton Community School District*, (222), March 10, 1994. In this case, the notice was sent on August 30, 2018, eight days before the hearing, and was therefore timely.

Second, the appellant asserts the school district failed to prove the pupil attended certain assemblies at which school rules and expectations were communicated to students. In order to prove that a pupil engaged in conduct that endangered the property, health or safety of others, Wis. Stat. § 120.13(1)(c) does not require proof that the school district explicitly warned the pupil that specific conduct may result in expulsion. *William S. by Tri-Cty. Area Sch. Dist.*, (132) June 21, 1985. In this matter, and the pupil knew or should have known that possessing individual baggies of marijuana on school grounds is not permitted by the district. Even if the

pupil avoided all relevant discussions of school rules, this fact would be immaterial for purposes of this appeal.

Finally, the appellant makes a general assertion that the administration presented inaccurate information at the hearing, without describing what information was inaccurate. In this matter, 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. The findings of a hearing officer as approved by the school board will be upheld if any reasonable view of the evidence sustains them. *L.P. by the Whitewater Unified School Dist.*, (351) Mar. 31, 1998. The pupil's misconduct is not disputed in this matter, and there is nothing in the record that undermines the hearing officer's findings.


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 J [REDACTED] A [REDACTED] by the Racine Unified School District Board of Education is affirmed.

Dated this 11 day of January, 2019


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

Parties to this appeal are:

J [REDACTED] A [REDACTED]
[REDACTED]

Candace Hall

[REDACTED]

Lolli Haws
District Administrator
Racine Unified School District
3109 Mt. Pleasant St.
Racine, WI 53404

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

COPIES MAILED TO:

J [REDACTED] A [REDACTED]
[REDACTED]

Candace Hall

[REDACTED]

Lolli Haws
District Administrator
Racine Unified School District
3109 Mt. Pleasant St.
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