


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></p> <p>by Racine Unified School District Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 22-EX-21</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’s mother and received by the Department of Public Instruction on December 23, 2022.

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 an unsigned letter entitled “Notice of Expulsion Hearing,” dated November 18, 2022. The letter advised that a hearing would be held before an independent hearing officer on November 29, 2022 that could result in the pupil’s expulsion from the Racine Unified School District through his 21st birthday. The letter was sent separately to the pupil and his mother. The letter alleged that the pupil engaged in conduct while at school or while under

the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that on November 14, 2022, the pupil was in the first-floor boy's bathroom when he made a video recording of another student pouring water over a third student inside a bathroom stall. The letter further alleges that the pupil posted the recording to Snapchat under the Snapchat name used by the pupil's brother.

The hearing was held before an independent hearing officer on November 29, 2022. Neither the pupil nor his parents appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The hearing officer found that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others by recording another student in the restroom and posting the video to Snapchat. The hearing officer further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the findings of fact of the hearing officer, dated November 29, 2022, was mailed separately to the pupil and his mother. The order stated the pupil was expelled through through the end of the 2022-2023 school year, with the possibility of conditional early reinstatement no earlier than January 4, 2023 to an Alternative Education Program. The expulsion order issued by the independent hearing officer was reviewed and affirmed by the school board on December 19, 2022. An audio recording of the expulsion hearing is part of the record.

DISCUSSION

The expulsion statute – Wis. Stat. § 120.13(1)(c) and (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 demands the pupil's expulsion.

The appeal letter in this case raises one issue which requires consideration. Appellant requests another expulsion hearing, stating that appellant was at work during the hearing and the pupil's father was supposed to take the pupil to the hearing but did not do so due to a family emergency. Appellant requests another hearing where she can take time off from work and bring the pupil to the hearing herself. Appellant does not suggest that anyone – appellant, the pupil, or the pupil's father – contacted the district or the hearing examiner at the time of the hearing to request that it be rescheduled or to explain why they were not there. Appellant does not explain why or whether the pupil, a 12th grader, was unable to attend the hearing by himself. The record indicates that the hearing examiner delayed the start of the hearing 24 minutes past the scheduled start time while the principal attempted to contact appellant or the pupil. Although the district may have chosen to postpone or reopen the hearing had appellant or the pupil contacted the district promptly and explained why they missed the hearing, Wisconsin law and due process considerations do not require a second hearing in this case. The record does not reflect a request for postponement of the hearing from the pupil, his mother or his father, or even a timely request following the hearing that it be reopened or other action taken to afford the pupil an opportunity to be heard. The record also does not suggest that the hearing officer or district were aware at the time of the expulsion hearing that circumstances existed which should delay the hearing in the interest of fairness for the pupil. Here, where the hearing officer had no indication that emergency circumstances had prevented appellant or pupil from appearing and the hearing officer received evidence regarding notice of the hearing provided to appellant and the pupil, it

was reasonable for the hearing officer to hold the hearing. *Wisconsin Dells Sch. Dist.*, Decision and Order No. 803 (Apr. 1, 2021). There was no obligation to postpone the hearing, especially where a postponement was not requested. *B.W. v. Black River Falls Sch. Dist. Bd. of Educ.*, Decision and Order No. 542 (May 26, 2005) (student and parent chose to attend a different meeting that was at the same time as the expulsion hearing).

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 Wis. Stat. § 120.13(1)(e).

ORDER

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

Dated this 20th day of February, 2023



Thomas G. McCarthy
Executive Director of the Office of the
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:

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Eric Gallien
District Administrator
Racine Unified School District
3109 Mt. Pleasant St.
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COPIES MAILED TO:

[REDACTED]
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