THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Fredell F[redacted] by the Milwaukee Public School District Board of Education	DECISION AND ORDER 97/98-EX-26

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the February 23, 1998 order of the Milwaukee Public School District Board of Education to expel the above named pupil from the Milwaukee Public School District until June 11, 1998. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on May 4, 1998.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, 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 sec. 120.13(1)(c), Wis. Stats. 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 record contains a letter entitled "Notice of Expulsion Hearing" dated February 17, 1998 from the district administrator of the Milwaukee Public School District. The letter advised that a hearing would be held on February 23, 1998 which could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his mother by regular mail and by messenger service. 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 Fredell was in possession of marijuana and a weapon (razor blade) at school on February 3, 1998. A transcript of the hearing is also part of the record.

The hearing was held in closed session on February 23, 1998. The pupil and his mother appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the independent hearing panel deliberated in closed session. The panel found 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 panel 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 February 23, 1998, affirmed by the Milwaukee Public School's Board of School Directors on March 25, 1998, was mailed separately to the pupil and his mother. The order stated the pupil was expelled until June 11, 1998.

DISCUSSION

School districts are limited purpose municipal corporations and have only such powers as are conferred specifically by statute or are necessarily implied therefrom. *Iverson v. Union Free High School District.,* 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which must be followed in the expulsion process.

In reviewing an appeal of an expulsion decision, the Wisconsin Court of Appeals has stated that the scope of the State Superintendent's review is limited to that set out in sec. 120.13(1)(c), Wis. Stats. In *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 667, 321 N.W. 2d 334 (1982), the court of appeals *in dicta* stated: "The superintendent's review, then, would be one to insure that the school board followed the procedural mandates of subsection (c) concerning notice, right to counsel, etc." *Id.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). It is therefore incumbent upon the State Superintendent in reviewing an expulsion decision to ensure 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 district demand the pupil's expulsion.

The appeal letter in this case raises eight issues which require consideration.[1] First, the pupil's mother alleges that she was not given adequate notice of the hearing so that she could

[1] The pupil's mother also filed a letter brief. This brief repeated the allegations made in the appeal letter. In addition, the letter asked that several areas of MPS operations be investigated, including the process of the Independent Hearing Panel , the school's decisions to call the police in response to incidents in the school and the decision to expel for certain offenses. Unless there is a violation of procedural due process or statutory requirements, these are matters of local concern and generally will not be addressed in an expulsion appeal. I encourage parents and school administrators to communicate and resolve these issues at the local level.

obtain legal representation or witnesses. The record indicates that the notice of expulsion hearing was mailed, to the pupil's current address, on February 17 and that another copy of the notice was sent to the messenger service on February 17. [2] Sec. 119.25(2)(c), Stats., requires that:

> "Not less than 5 days' written notice of the hearing under par. (b) shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall include all of the information specified in s. 120.13(1)(e)4."

As indicated above, the statute requires that a hearing be held no less than five days after the notice of expulsion hearing is given. These five days include weekends and holidays. *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213, (December 20, 1993); *Joshua K. v. Clinton Community School District Board of Education*, Decision and Order No. 216, (January 31, 1994); *Michael Ryan H.* v. *Clinton Community School District Board of Education*, Decision and Order No. 222, (March 10, 1994). My predecessor has previously found that the day the notice was mailed is the operative day for determining compliance with sec. 120.13(1)(e)4. and 119.25(2)(c), Stats. *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986). When calculating the time limit, the day of the mailing is not included but the day of the hearing is included. See sec. 990.001, Stats.; *Lori P. v. Cudahy School District Board of Education*, Decision and Order No. 169 (May 21, 1990); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). Therefore, I find that the school district complied with the notice requirement by mailing the notice on the 17th and holding the hearing on the 23rd, the 6th day. Furthermore, neither the pupil nor his mother requested an adjournment or otherwise indicated that they were unprepared for the hearing. Any argument that additional time was needed to prepare was waived.

---

[2] It is unclear from the record when the notice was received via the messenger service, however, the mother indicates she received the letter by messenger service on Thursday, February 19th.

Secondly, the pupil's mother alleges that she was not afforded a reasonable opportunity to listen to and question the witnesses. A review of the record indicates that the mother was allowed and did question the witnesses presented. The pupil was also given the opportunity to present any witnesses. The pupil presented testimony from himself and his mother. There is no indication in the record that the pupil or his mother was denied any opportunities to present further evidence.

Thirdly, the pupil's mother alleges that she was not given a "reasonable opportunity" to examine the evidence against Fredell. She is apparently referring to the marijuana that was confiscated from Fredell. While the school administration did not present the physical evidence to the independent hearing panel, it did present testimony that the evidence was confiscated from Fredell, that it appeared to be marijuana, that Fredell admitted it was marijuana and that the police tested the substance and determined it to be marijuana.[3] The pupil and his mother were given an opportunity to question the witnesses about the substance. There was sufficient evidence for the panel to make its determination, without actually viewing the evidence. I find no procedural error.

The pupil's mother's fourth and fifth allegations concern the opportunity to rebut the evidence submitted by the administration and to present a defense or explanation. I find, based upon the record, that the pupil and his mother were given every opportunity to cross examine witnesses and to present evidence and testimony. There was no procedural error.

The pupil's mother's sixth allegation concerns the assistance that was provided by the Milwaukee Student Services Coordinator. As this allegation is not explained, I am unable to

[3] The mother alleges in her appeal letter and subsequent letter that the city attorney dropped any charges of possession of marijuana because the substance was not adequately tested. This information was not presented to the independent hearing panel. My review of this expulsion is limited to the actual expulsion hearing record and generally matters not submitted to the board at the expulsion hearing will not be considered by the State Superintendent on appeal. *Omar c. v. Whitewater School District Board of Education,* Decision and Order No. 258 (August 11, 1995) and *Tony R. v. Lake Geneva Joint No 1 School District Board of Education,* Decision and Order No. 259 (August 11, 1995). As indicated in this decision, there was ample evidence for the panel to conclude that the substance was marijuana.

determine the relevance of this argument. Regardless, it is not relevant to my review of compliance with statutory procedural requirements.

The seventh complaint alleges that expulsion was too harsh and that according to the MPS Guideposts handbook[4], other interventions should have been utilized. It has repeatedly been held that the decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at sec. 120.13(1)(c) Wis. Stats. *Brandon H. v. DeSoto Area School District Board of Education,* Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education,* Decision and Order No. 294 (June 24, 1996); *Troy Y v. Burlington School District Board of Education,* Decision and Order No. 309 (January 21, 1997).

Finally, the pupil's mother alleges that the Independent Hearing Panel and the assistant principal were not prepared for the hearing. Whether or not the panel was prepared for the hearing is irrelevant. The panel convened, heard the testimony and received the evidence, deliberated, and rendered a decision. There is nothing in the record to suggest that the panel did not adhere to procedural requirements or abdicate its responsibility.

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 sec. 120.13(1)(c), Wis. Stats.

[4] The handbook was not part of the hearing record, nor was it submitted with the appeal. Furthermore, this argument was not made to the independent hearing panel.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Fredell F[redacted] by the Milwaukee Public School District Board of Education is affirmed.

Dated this 2nd day of July, 1998.

John T. Benson/15

John T. Benson
State Superintendent of Public Instruction