

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Joshua D</p> <p>by Tomorrow River School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 99/00 EX 11</p>
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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Tomorrow River School District Board of Education to expel the above-named pupil from the Tomorrow River School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 27, 2000.

In accordance with the provisions of Wis. Adm. 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). 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 March 15, 2000, from the district administrator of the Tomorrow River School District. The letter advised that a hearing would be held on March 22, 2000 that could result in the pupil's expulsion from the Tomorrow River School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged

that the pupil knowingly possessed a controlled substance on school property on March 6, 2000. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

The hearing was held in closed session on March 22, 2000. The pupil and his parents appeared at the hearing without 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 school board deliberated in closed session. The board found the pupil engaged in conduct while at school that endangered the property, health, or safety of others. The board also found that this violated the rules and policies of the school district. The school board 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 March 22, 2000, was prepared. The order stated the pupil was expelled through the 2000-2001 school year.

## 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 § 120.13(1)(c), which establishes certain categories of offenses that may be the basis for an expulsion and sets out specific procedures that 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 § 120.13(1)(c). 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 two issues. First, the mother complains that the discipline was too harsh. Second, she complains that the principal, Mr. Toelle, was biased against her son. Neither of these complaints warrant reversal of the expulsion. 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 §120.13(1)(c). *Nathaniel S. v. Wausau School District*, Decision and Order No. 350 (March 25, 1998); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993).

Whether or not Mr. Toelle was biased against Joshua is a credibility determination for the school board to make at the expulsion hearing. The board is in the best position to determine the bias and credibility of a witness. See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

However, the board did not comply with the notice requirements of §120.13(1)(c)4. It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statute's requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District Board of Education*, Decision and Order No. 408 (February 24, 2000); *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 143 (July 2, 1986).

Section 120.13(1)(c)4 requires that not less than five days written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

- a. The specific grounds, under subd. 1, 2, or 2m, and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.
- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.
- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
- f. That the school board shall keep written minutes of the hearing.
- g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- h. That if the pupil is expelled by the school board, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
- i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
- j. That the decision of the school board shall be enforced while the department reviews the school board's decision.
- k. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.
- l. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13(1).

The notice of expulsion did not contain the following:

- a. The specific grounds, under subd. 1, 2, or 2m, that the board would consider for expulsion.
- b. That the school board shall keep written minutes of the hearing.
- c. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- d. That if the pupil is expelled by the school board, the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
- e. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
- f. That the decision of the school board shall be enforced while the department reviews the school board's decision.
- g. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.

While the notice advised the pupil what specific conduct it considered to be a violation of school policy, it did not identify which subsection of §120.13(1)(c) was violated. In *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214, December 21, 1993, my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, the statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. Citing *John K. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 178 (May 17, 1991.)

Also, while the notice does advise Joshua that he may be expelled, the state superintendent has repeatedly suggested that school districts advise the pupil of the maximum length of expulsion.

The reversal of this expulsion does not condone the pupil's conduct. The board may cure the error by providing proper notice of the expulsion hearing, re-hearing the expulsion, and providing proper notice of the expulsion decision.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, overturn this expulsion.

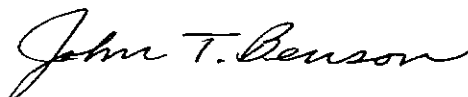
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of § 120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of Joshua D \_\_\_\_\_ by the Tomorrow River School District Board of Education is overturned.

Dated at Madison, Wisconsin, on May 24, 2000.



John T. Benson  
State Superintendent of Public Instruction