

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Jeremy Helland</p> <p>by Fall Creek School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 00/01 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. Stats. § 120.13(1)(c) from the order of the Fall Creek School District Board of Education to expel the above-named pupil from the Fall Creek School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 12, 2001.

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 May 9, 2001, from the district administrator of the Fall Creek School District. The letter advised a hearing

would be held on May 17, 2001 that could result in the pupil's expulsion from the Fall Creek School District through his 21<sup>st</sup> birthday. The letter was sent separately to the pupil and his parents 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 and that he repeatedly refused or neglected to obey school rules. The letter specifically alleged Jeremy engaged in physical confrontations and altercations with other students. A summary of these allegations was attached to the notice of hearing. The summary referenced six incidents between September 29, 2000 and May 4, 2001 that included throwing items at other students on the school bus, putting two different students in a dumpster, burning a student with a lighter, and hitting a student across the face with a stick. 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 May 17, 2001. 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 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 and that he repeatedly refused or neglected to obey school rules. 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 May 22, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2001-2002 academic year

with the opportunity for conditional readmission at the conclusion of the first semester of the 2001-2002 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 four issues that require consideration. The parents complain that the witnesses to the various allegations did not testify, they did not have proper

notice of the possible length of the expulsion, the school board asked Jeremy inappropriate questions, and the length of the expulsion was too harsh.

Mr. Nolan, high school principal testified at the expulsion hearing. Mr. Nolan read the witness statements to the board. He also submitted pictures of injuries to one of the victims. No witnesses testified. The parents complain because Mr. Nolan did not read the statements of the victims, only witnesses. Mr. Nolan stated, in his testimony, that he did not use the victims statements for any of the allegations because they may be biased. It appeared, however, from the record, that Mr. Nolan had the statements available at the hearing. Mr. Nolan presented information both incriminating Jeremy and mitigating his conduct. After Mr. Nolan presented the information, the parents were given an opportunity to ask him questions. At this time, the parents could have asked him to read the statements of the victims, if they thought that was important.

The parents submitted the written statement of one of the people who Jeremy put in a dumpster. She minimized his conduct, stating he apologized to her and she did not think he meant to hurt her. The parents also submitted a letter from a neighbor who indicated they saw Jeremy after one of the altercations and saw bruises on his chest. They also presented a response to each allegation. They did not present any of these witnesses. The school board members asked questions of Mr. Nolan, Jeremy's parents and Jeremy.

The school administration relied upon hearsay evidence to support the allegations. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order

No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The state superintendent has repeatedly found that a school board may consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). In his testimony, Mr. Nolan explained why he believed the witnesses were credible. In fact, he did not present statements made by some witnesses who he believed may be biased. The school board could then determine whether it found the statements, without direct testimony, reliable. The board could also consider Jeremy's testimony to determine what conduct occurred.

Next, the parents allege they were not aware that Jeremy may be expelled through the 2001-2002 academic year. The parents allege they would have had legal representation at the hearing if they knew this. The notice of expulsion hearing clearly states that the maximum term of expulsion could be until Jeremy's 21<sup>st</sup> birthday. Therefore, Jeremy and his parents were given adequate notice of the maximum penalty.

Thirdly, the parents allege the school board asked Jeremy inappropriate questions. They allege that it was wrong for the board to ask him how long he lived in Fall Creek and whether he played any sports. The board must determine whether there are facts to support expulsion and the length of the expulsion. This information may assist the board in making that determination.

Finally, the parents complain that the length of the expulsion was too long. They also allege that another student was given less punishment for what they considered a more serious offense (possession of drugs on school premises). Since the authority to “approve, reverse or modify the decision” was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *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). The school board is in the best position to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify the pupil's expulsion period. I, therefore, affirm this expulsion.

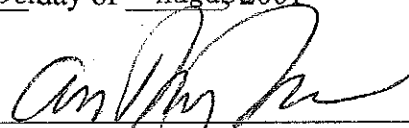
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of § 120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Jeremy Helland by the Fall Creek School District Board of Education is affirmed.

Dated this 9th day of August 2001



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Anthony S. Evers, Ph.D.  
Deputy State Superintendent of Public Instruction

Parties to this appeal are:

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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.

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