

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Kyle M.

by Marshall School District Board of  
Education

DECISION AND ORDER

Appeal No.: 00/01 EX 21

**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 Marshall School District Board of Education to expel the above-named pupil from the Marshall School District. This appeal was filed by the pupil and received by the Department of Public Instruction on October 18, 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 September 7, 2001, from the district administrator of the Marshall School District. The letter advised a hearing would be held on September 19, 2001 that could result in the pupil's expulsion from the Marshall School District until 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. The letter specifically alleged that on August 30, 2001, he possessed a weapon off school grounds with the intent to deliver the weapon to a friend, knowing the weapon would be brought onto school grounds and he did not notify school officials that the weapon was on school grounds. 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 September 19, 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. 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 September 21, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through

the 2001-02 school year, with an opportunity for early readmission at the beginning of the second semester of the 2001-02 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 parents do not raise any issues in the appeal letter. In reviewing the record in this case, I find the school district complied with all of the procedural requisites.<sup>1</sup> I, therefore, affirm this expulsion.

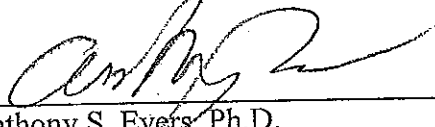
### CONCLUSIONS OF LAW

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 § 120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of Kyle M \_\_\_\_\_ by the Marshall School District Board of Education is affirmed.

Dated this 11<sup>th</sup> day of December, 2001

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

<sup>1</sup> The conduct contained in the notice of expulsion included conduct that allegedly occurred on school grounds and conduct that allegedly occurred off school grounds. However, the statutory grounds for expulsion only referenced conduct that occurred at school or under supervision of a school authority. In light of the grounds for expulsion listed in the notice, it would be improper for the board to expel Kyle based solely on the off-grounds conduct. However, the board specifically found that conduct occurred on school grounds, as alleged in the notice of expulsion hearing. Therefore, reversal is not required.