Decision and Order No.: 451

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Derek D by Flambeau School District Board of Education	DECISION AND ORDER Appeal No.: 00/01 EX 25

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 Flambeau School District Board of Education to expel the above-named pupil from the Flambeau School District. This appeal was filed by the pupil's mother and received by the Department of Public Instruction on November 29, 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 14, 2001, from the district administrator of the Flambeau School District. The letter advised a

hearing would be held September 26, 2001 that could result in the pupil's expulsion from the Flambeau School District until his 21st birthday. The letter was sent separately to the pupil and his foster 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 September 7, 2001 he possessed marijuana on school grounds. On or about September 20, 2001, the district sent separate written notice to Derek and his foster parents advising them that the hearing was postponed to September 27, 2001.

The hearing was held in closed session on September 27, 2001. The pupil and his foster parent appeared at the hearing without counsel. The pupil's social services representatives were also present at the hearing and allowed to ask the district questions. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his foster parent 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 October 3, 2001, was mailed separately to the pupil and his foster parents. The order stated the pupil was expelled through the 2001-02 school year. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

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, filed by the pupil's mother, raises three issues. First, she alleges that she did not receive notice of the expulsion hearing, therefore the expulsion should be overturned due to procedural error. One of the social service representatives asked the district if Derek's mother was notified of the expulsion hearing. The district replied that it did not know her name

or address and therefore notice was not sent. It is clear from the record that the district knew Derek was in foster care, but is also clear that the district was not provided much information concerning Derek's family or school history. It is quite clear the social services representatives at the hearing had not provided the family information to the school district upon his placement in foster care in the Flambeau School District. It is also clear that the mother did not contact the district to inquire about her son's progress. The mother claims that she could not attend the hearing because she received short notice from the social workers.[1]

Sec. 120.13(1)(c)4. states that notice of the hearing shall be sent to the pupil and his parent or "guardian." The statute does not use the more specific term "legal guardian". The state superintendent has previously determined that when a child is placed in foster care, the district may, under certain circumstances, send notice to the foster parent in place of the parents without running afoul of §120.13(1)(c). *Jaime B. v. Barron School District Board of Education*, Decision and Order No. 358 (May 14, 1998), citing *Nathan N. v. Hudson School District Board of Education*, Decision and Order No. 163 (June 5, 1989) *and Randy H. v. Central/Westosha UHS Board of Education*, Decision and Order 204(April 6, 1993). In this case, none of the people who had access to Derek's family history provided it to the school. The school provided notice of the hearing to Derek and the only guardian they knew, his foster parents. See also *Kyle W. v. Viroqua School District Board of Education*, Decision and Order 413 (April 27, 2000) *(The pupil was moved to a foster care placement after being suspended from school. This address was*

[1] The mother also had one of Derek's treatment foster care caseworkers write to support her appeal to the state superintendent. This social worker echoes the mother's complaints. While the caseworker alleges that the school was informed that Derek was in foster care and that his mother retained legal guardianship, it is equally clear that this case worker, who was his case manager since April 2001, did not inform the school of the mother name or address.

not provided to the school. The board mailed the expulsion order to the last address it had for the pupil met the statutory requirement of notice of the expulsion order.)

The mother also alleges the notice advising of the rescheduled hearing was untimely. The notice of the date change was apparently mailed on September 20, 2001. The certified mail receipt was not signed by Derek's foster mother until September 24, 2001. The hearing was held on September 27, 2001. Sec. 120.13(1)(c)4. requires that notice of the expulsion hearing be sent not less than five days prior to the hearing. "Sent" is not the same as received. In this case, the notice was sent seven days before the hearing and received three days before the hearing. See e.g. *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); *Justin O. v. Monona Grove School District Board of Education,* Decision and Order No. 332 (September 4, 1997). Therefore, there was no statutory violation. Additionally, the issue of timeliness of notice was addressed by the board at the hearing. No one objected or requested an adjournment to assist the pupil's presentation.

Finally, the mother alleges that the information relied upon by the district was unreliable and therefore unfair. This was not raised at the hearing. Matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). A school board's findings will be upheld if any

reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified School District,* Decision and Order No. 351 (March 31, 1998); *Daniel A. v. Mauston School District Board of Education,* Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). Derek admitted to the investigating police officer that he possessed marijuana at school. He pulled a bag of marijuana from his pants pocket and gave it to the police officer. He also admitted to the board that it was true. There is no basis for the mother's argument.

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 § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Derek D by the Flambeau School District Board of Education is affirmed.

Dated this 28th day of January, 2002.

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