

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  Ericka Tj  by Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER  Appeal No.: 00/01 EX29</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 Milwaukee School District Board of Education to expel the above-named pupil from the Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 19, 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 November 29, 2001, from the student services coordinator of the Milwaukee School District. The letter advised

a hearing would be held on December 7, 2001 that could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and her 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 November 12, 2001, at Stueben Middle School, the pupil was in possession of and used a knife and committed burglary.

The hearing was held in closed session before an independent hearing panel on December 7, 2001. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent 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 engaged 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 independent hearing panel, dated December 7, 2001, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through June 6, 2002. The school board reviewed and approved the panel's order on December 19, 2001. A transcript of the hearing is 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 in this case did not raise any issues concerning the expulsion. The parent requested a hearing in an attempt to allow her daughter to re-enroll in a public or alternative school. The state superintendent does not hold appeal hearings. The review is limited to the record created at the expulsion hearing. Therefore, the parent's request is denied.

When an appeal is filed, the state superintendent is required to examine the record to determine whether the 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. In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

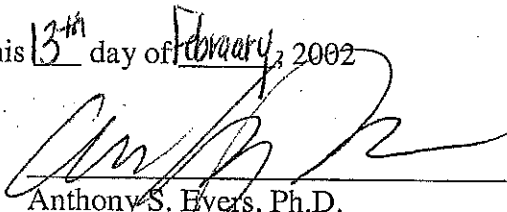
### CONCLUSIONS OF LAW

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 Ericka T by the Milwaukee School District Board of Education is affirmed.

Dated this 13<sup>th</sup> day of February, 2002



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