

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  Joshua D.  by South Milwaukee School District Board of Education	DECISION AND ORDER  Appeal No.: 02-EX08
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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 South Milwaukee School District Board of Education to expel the above-named pupil from the South Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 13, 2002.

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 26, 2001, from the principal of the South Milwaukee High School. The letter advised a hearing

would be held on October 9, 2001 that could result in the pupil's expulsion from the South Milwaukee School District. The letter was sent separately to the pupil and his parents by certified and regular 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 the rules. The letter specifically alleged that Joshua possessed drug paraphernalia and a copy of his disciplinary record was attached to the notice of expulsion hearing.

The hearing was held in closed session on October 9, 2001. Neither the pupil nor his parents appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

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 follow 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 October 9, 2001, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until age 22. 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 raises one issue. The mother alleges that the term of expulsion is too harsh, especially compared to how she believes others at the school have been disciplined. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, 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 judge the demeanor of witnesses as well as 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 causes me to modify the pupil's expulsion period.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

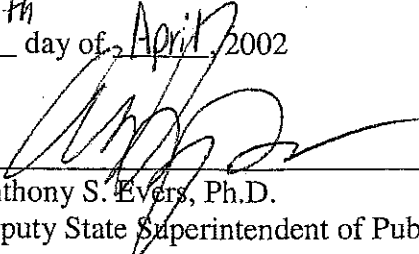
### CONCLUSIONS OF LAW

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 Joshua D. \_\_\_\_\_ by the South Milwaukee School District Board of Education is affirmed.

Dated this 11<sup>th</sup> day of April, 2002

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