

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Patrick P</p> <p>by Merrill Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX12</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 Merrill Area School District Board of Education to expel the above-named pupil from the Merrill Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 12, 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 February 12, 2002, from the district administrator of the Merrill Area School District. The letter advised a

hearing would be held on February 28, 2002 that could result in the pupil's expulsion from the Merrill Area School District through age 21. 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 February 7, 2002, Patrick possessed marijuana, drug paraphernalia and cigarettes on the school grounds of the Prairie River Middle School.

The hearing was held in closed session on February 28, 2002. The pupil and his parents appeared at the hearing represented by an attorney. 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 February 28, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2002-03 school year. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing, and copies of all exhibits used at the 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.

In his appeal, the pupil alleges that the punishment was excessive, especially in light of how another Merrill School District pupil was treated and how another school district in the state treat first time possession of marijuana. The pupil's attorney obviously researched issues of zero tolerance and other means of responding to drug possession at school. He presented an ERIC article critiquing the use of zero tolerance policies as well as a copy of the Janesville School District's policy to address first time drug possession at school. The school board heard this information as well as information from the administration about why the administration supports the current Merrill School District policy. As public education in Wisconsin is based

upon school district local control, it is inappropriate for the state to dictate local policy unless required by statute. That is precisely what the pupil is asking me to do. The department of public instruction offers resources and consultation to school districts in these areas. However, the final decision lies within the sole discretion of the local board.

In his appeal, the pupil also presented information regarding how a different pupil was treated when he possessed marijuana at school.¹ 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). While the pupil insists that the other expelled student was similar to him in every way; that is not true. The other pupil was in high school and it did not involve discovery of marijuana during a locker search. While the conduct occurred during the same school year, Patrick engaged in this conduct much later in the year. Perhaps the board believed a harsher punishment was necessary due to these factors. Because of these various factors, it would be inappropriate for me to second guess why one student was treated differently than another. Additionally, this issue was not raised at the expulsion hearing before the board. Arguments raised for the first time on appeal are generally waived. *Travis J.M. v. Deerfield*

¹The pupil's attorney submitted the expulsion order of another student who was previously represented by the same firm. The other student was expelled in September 2001 for the remainder of the school year. Because the other student's expulsion record is a pupil record, I question whether the attorney has permission to reveal this information to his new client, the P. The department's legal office will send a letter to the other student and his parents, through the school district, informing them that this information was received at the department without any accompanying consent to release. Also, the information will be kept in a sealed envelope with the appeal record. I assume the attorney for the school board also received this information. I request Mr. Jones to take the necessary steps to protect the confidentiality of the student's information. Finally, unless Mr. Wedemeyer had prior consent to release this information to the P he must retract any copies he provided to the Pl or anyone else. The others who received the information, such as the P should be warned that they are not allowed to disclose the information to anyone without the other student's consent.

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).

Finally, 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 Patrick P. by the Merrill Area School District Board of Education is affirmed.

Dated this 10th day of May, 2002



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