

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Sabrina T</p> <p>by Menominee Indian School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX13</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 Menominee Indian School District Board of Education to expel the above-named pupil from the Menominee Indian School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 2, 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 January 11, 2002, from the district administrator of the Menominee Indian School District. The letter

advised a hearing would be held on January 22, 2002 that could result in the pupil's expulsion from the Menominee Indian School District through age 21. The letter was sent separately to the pupil and her grandparent (legal guardian) 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 January 7, 2002, while on a school trip, she possessed three marijuana cigarettes and that on January 9, 2002, two more marijuana cigarettes were found in her locker at school.

The hearing was held in closed session on January 22, 2002. The pupil and her grandparent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her grandparent 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 repeatedly violated school rules, causing a disruption in the educational interests of other students and the ability of the faculty to provide educational services in the school setting. 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 January 23, 2002, was mailed separately to the pupil and her grandparent. The order stated the pupil was expelled through January 2003, with an opportunity for early readmission at the beginning of the 2002-03 school year. An audiotape of the expulsion 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.

In reviewing the record in this case, I find that there was a procedural violation that requires me to reverse the expulsion. In the notice of expulsion hearing, the administration relied upon the expulsion ground in §120.13(1)(c)1. that Sabrina's conduct while at school or under the supervision of a school authority, endangered the property, health or safety of others at school or

under the supervision of a school authority. This is a valid ground for expulsion. However, the board's conclusions of law reference a different ground for expulsion. The board found that her conduct was evidence of repeated rule violations that caused a disruption in the educational interests of other students and the ability of the faculty to provide educational services in the school setting. This ground is found in §120.13(1)(c)2. and only applies when a pupil is at least 16 years of age and no other ground for expulsion applies. Because the school district is required to provide the pupil advance notice of the statutory grounds under which it intends to proceed, it cannot make its finding based upon a different statutory ground for which the student did not receive notice.

The expulsion statute provides in part:

**120.13 School Board Powers.**

(1)(c) 4. Not less than 5 days written notice of the hearing...shall be sent...The notice shall state all of the following:

a. **The specific grounds under subd. 1., 2. or 2m** and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

In *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214

(December 21, 1993), my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, the statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. [Citing *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, (May 17, 1991).]

It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature and failure to comply with the statute's requirements renders the expulsion void. Even where a pupil unequivocally admits misconduct that is grounds for expulsion, the failure to provide the mandated, advance statutory notice calls for reversal. See *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Justin E. v.*

*Antigo School District Board of Education*, Decision and Order No. 329 (July 24, 1997); *Ryan G. v. Sparta Area School District*, Decision and Order No. 325 (May 19, 1997); *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178 (May 17, 1991); *Christopher K. v. West Allis School District*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District*, Decision and Order No. 143 (July 2, 1986). Because the notice of expulsion and the finding of fact and conclusions of law are not based upon at least one common statutory ground, the expulsion must be reversed.

Nevertheless, it may be possible for the board, without completely rehearing the case, to correct this error. See decisions in *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

This decision in no way condones the pupil's conduct or suggests that expulsion is not appropriate. However, because the procedural mandates were not strictly complied with, I am compelled to reverse the expulsion order.

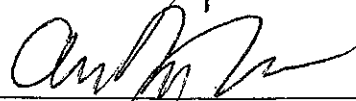
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of § 120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Sabrina T. by the Menominee Indian School District Board of Education is reversed.

Dated this 29<sup>th</sup> day of May, 2002



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