

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Raymond O/</p> <p>by DC Everest Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX19</p>
---	--

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 DC Everest Area School District Board of Education to expel the above-named pupil from the DC Everest Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 23, 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 March 20, 2002, from the principal of the DC Everest Area Junior High School. The letter advised a

hearing would be held before a hearing officer on April 2, 2002 that could result in the pupil's expulsion from the DC Everest Area School District through his 21st birthday. 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 between September 2001 and February 14, 2002, the pupil inappropriately touched a female student who was being transported to and from school. The specific acts alleged include that he repeatedly grabbed and squeezed the girl's buttocks, touched her breast on the outside of her clothes, put his hand up her shirt and touched her breast underneath her bra, and touched her vagina on the outside of her clothes.

The hearing was held by the hearing officer in closed session on April 2, 2002. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence, in the form of police reports and Raymond's testimony, 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 hearing officer submitted written recommended findings of facts and conclusions of law. In essence, the hearing officer concluded, based upon the evidence presented at the hearing that between September 2001 and February 14, 2002, Raymond did the following to a female student while she was transported on a school bus from school: repeatedly grabbed and squeezed her buttocks, touched her in the breast area on the outside of her clothing, put his hand up her shirt and touched her breast underneath her bra and touched her vagina outside her clothes. The hearing officer concluded that 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. He also found that the interests of the school demanded the student's expulsion. The recommended order for expulsion containing the findings of fact and conclusions of law of the hearing officer, dated April 2, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the remainder of the 2001-02 school year and was suspended from the school bus until the end of the first semester of 2002-03 school year. Minutes of the expulsion hearing and an audiotape of the expulsion hearing are part of the record.

On April 23, 2002, the DC Everest School Board met in Executive Session and approved the hearing officer's recommendation to expel the pupil.

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. First, they allege that the statement which the hearing officer used to make his decision was inaccurate. Raymond and his parents chose not to contest the statement at the hearing. In fact, Raymond admitted that he engaged in the conduct as alleged. He stated “everything started out small and got worse and worse”. Therefore, the parents’ attacks on the truth or completeness of the police statement must be dismissed as waived.

The parents ask the state superintendent to “investigate this matter fully” and “make it clear to the school officials the proper, fair and judicious way to handle these situations.” As noted above, the state superintendent’s authority in an expulsion is limited to the procedures used at the hearing. In this case, the pupil admitted to the conduct, thus other witnesses were not required. In my review of another expulsion involving the same incidents, it is clear, however, that the school was willing and able to produce the witnesses needed. They were also willing and did provide full and fair hearings to the pupil. The allegations made by the teenage female victim were serious. She was repeatedly physically and sexually harassed and assaulted. The school responded by investigating and taking disciplinary measures against the perpetrators. The appellant has not provided any information to suggest that the school administration is not operating in a proper, fair and judicious manner.

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 Raymond O) by the DC Everest Area School District Board of Education is affirmed.

Dated this 22nd day of July, 2002



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