

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>David N</p> <p>by Milton School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02-EX20</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 Milton School District Board of Education to expel the above-named pupil from the Milton School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 28, 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 April 16, 2002, from the district administrator of the Milton School District. The letter advised a hearing would

be held on April 23, 2002 that could result in the pupil's expulsion from the Milton School District. The letter was delivered by personal service to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and that he 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 April 4, 2002, he was in possession of drug paraphernalia and under the influence of a controlled substance while on school property.

The hearing was held in closed session on April 23, 2002. The pupil and his parents appeared at the hearing represented by Attorney Daniel. 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 May 13, 2002, was mailed to the pupil and his parents. The order stated the pupil was expelled through the fall semester of the 2003-2004 school year, with an opportunity for early conditional readmission. 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 filed by the pupil's attorney did not raise any issues. However, because an appeal was filed, I am obligated to review the record of the expulsion proceedings. In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

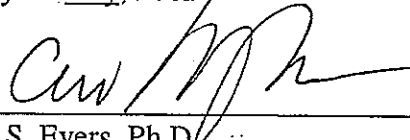
**CONCLUSIONS OF LAW**

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 David N. [redacted] by the Milton School District Board of Education is affirmed.

Dated this 26th day of July, 2002



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