

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

Luke D

by Durand School District  
Board of Education

DECISION AND ORDER

Appeal No.: 02-EX 28

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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 Durand School District Board of Education to expel the above-named pupil from the Durand School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 16, 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 November 6, 2002, from the district administrator of the Durand School District. The letter advised a hearing

would be held on November 18, 2002 that could result in the pupil's expulsion from the Durand 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 October 30, 2002 at the Durand High School, Luke grabbed two different students and put them in headlocks. One of the students was unable to breath, fell to ground, hit his head on the floor and sustained an injury.

The hearing was held in closed session on November 18, 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 November 21, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through end of 2003-04 school year with an opportunity for early, conditional readmission at the beginning of the 2003-04 school year. A 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.L.*, 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 four issues. First, the parents allege that the request for a closed hearing was not honored. The parents allege that the father of one of the students who was put in a headlock by Luke was present at the hearing. The hearing record reflects that this witness was allowed to be present only for his testimony. Allowing a witness, whether it is a factual witness or a character witness, to attend the hearing and give testimony does not violate the right to a closed hearing. The school administration, as well as the student, has a right to present evidence to support or refute the charges.

Secondly, the parents allege that the “school board members letters” were sent by regular mail, rather than certified mail. The parents complain that anyone could have opened the letter; however, they do not indicate that any unauthorized person opened or read the mail. The notice of the expulsion hearing was sent by certified mail, even though that is not required by statute. The record is not clear whether the order of expulsion was sent by certified or regular mail. Regardless, there is no requirement that the school board use certified mail to send expulsion related correspondence.

Thirdly, the parents allege that the principal and superintendent acted “very inappropriate” and that the principal called Luke a “terrorist”. The parents do not explain what conduct was inappropriate. This allegation is not cause to overturn an expulsion order. As previously stated, this review is limited to statutory and procedural requirements. Furthermore, nothing in the hearing record suggests that neither the principal nor the superintendent engaged in inappropriate behavior. See *Michael J. v. Nicolet Union High School Board of Education*, Decision and Order No. 456 (March 4, 2002); *Tyler R. v. Rib Lake School District Board of Education*, Decision and Order No. 473 (July 22, 2002).

Finally, the parents allege that the “ALEC” number system was not followed by the school district. The school board’s policies in this situation are irrelevant to my determination. In accordance with §120.13(1)(c), Luke was expelled for engaging in conduct that endangered the health and safety of another pupil, not repeated violation of school rules. Luke’s actions seriously injured another student. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District*

*Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

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

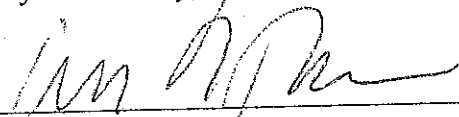
### CONCLUSIONS OF LAW

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 Luke D. by the Durand School District Board of Education is affirmed.

Dated this 14 day of February, 2003.

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