

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Evan D.</p> <p>by Burlington Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 02 EX 29</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 Burlington Area School District Board of Education to expel the above-named pupil from the Burlington Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 20, 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 5, 2002, from the district administrator of the Burlington Area School District. The letter advised a

hearing would be held on November 11, 2002 that could result in the pupil's expulsion from the Burlington Area School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct not while at school or under the supervision of school authority which endangered the property, health, or safety of others at school. The letter specifically alleged that on October 18, 2002 he was under the influence of alcoholic beverages on school grounds.

The hearing was held in closed session on November 11, 2002. The pupil and his parents appeared at the hearing without counsel. 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 which endangered the property, health, or safety of others at school. 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 25, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2003-04 school year with an opportunity for early readmission, through the technical college, at the beginning of the 2003-04 school year. Minutes of the school board expulsion hearing and an audiotape of the expulsion 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.

The appeal letter filed by the parents essentially alleges that expulsion was unjustified. First, the parents argue that Evan's conduct did not endanger the health, safety or welfare of anyone at school. Evan went to the high school football game under the influence of alcohol. Then, he and other students left the football game to consume more alcoholic beverages and returned to the game. Expulsions concerning alcohol consumption at school or at school sponsored events have previously been upheld as conduct that endangers the health, safety or welfare of others at school. *Jessica G. v. Chippewa Falls Area Unified School District Board of*

Education, Decision & Order No. 409 (March 15, 2000); *Troy Y. v. Burlington Area School District Board of Education*, Decision & Order No. 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision & Order No. 324 (May 8, 1997); *Thomas P. v. Necedah Area School District Board of Education*, Decision & Order No. 289 (May 23, 1996). Therefore, it was not unreasonable for the board to conclude that Evan's behavior endangered the health, safety or welfare of others at school.

Next, the parents allege that it was not fair to consider Evan's prior discipline issues when determining the expulsion period. It is permissible to consider a student's discipline history when determining the appropriate discipline at the expulsion hearing, as long as the student has been given notice that his pupil records may be presented to or considered by the board. *Leo P. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Matt H. v. Tomorrow River School District Board of Education*, Decision & Order No. 349 (March 23, 1998); *Marc G. v. Maple School District Board of Education*, Decision & Order No. 213 (December 20, 1993). In this case, the notice of expulsion hearing did warn Evan and his parents that his discipline record could be considered by the board.

The parents also allege that the punishment was excessive. 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.

Finally, the parents suggest that Evan's personality and ADHD contributed to his decision to drink alcohol. As required, the school district's IEP team conducted a manifestation hearing and determined that Evan's conduct was not a manifestation of his disability. Furthermore, the expulsion order does provide Evan with alternative education, consistent with his IEP, during the period of expulsion.

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

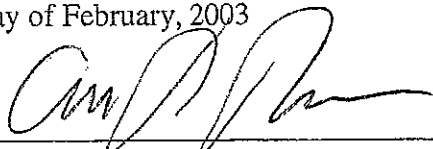
CONCLUSIONS OF LAW

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 Evan D _____ by the Burlington Area School District Board of Education is affirmed.

Dated this 18th day of February, 2003



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