

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Ryan M

by Antigo School District
Board of Education

DECISION AND ORDER

Appeal No.: 03-EX03

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 Antigo School District Board of Education to expel the above-named pupil from the Antigo School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 9, 2003.

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 May 15, 2002, from the district administrator of the Antigo School District. The letter advised a hearing would

be held on May 22, 2002 that could result in the pupil's expulsion from the Antigo 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 on May 8, 2002, Ryan possessed drug paraphernalia at school.

The hearing was held in closed session on May 22, 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 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 22, 2002, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2002-03 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 in this case raises two issues. First, the parents allege that Ryan has been identified as having ADHD and is subject to a § 504 plan. Because of this, the parents allege that the district should have held a manifestation hearing to determine whether his conduct was the result of his disability. 29 USC § 705 (20)(C)(iv), states that a local education agency (LEA) may take disciplinary action *pertaining* to the use of illegal drugs or alcohol against any student who is an individual with a disability and who is currently engaging in the illegal use of drugs or alcohol to the same extent that such disciplinary action is taken against students who are not disabled. § 705(20)(C)(iv) also states that due process procedures in 34 CFR 104.36 do not

apply. There is evidence in the record that Ryan was a drug user at the time of the incident and that he was not receiving AODA treatment. Thus, federal law allows the board to expel a §504 disabled pupil his possession of drug paraphernalia.

Secondly, the parents allege that the school administrators participated in the decision making process. This is not supported by the record. The record clearly reflects that everyone other than the school board and the school board secretary left the room during the deliberations.

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 Ryan M. _____ by the Antigo School District Board of Education is affirmed.

Dated this 7th day of March, 2003.



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