

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>Jason M</p> <p>by Arbor Vitae - Woodruff Jt. 1 School District Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 03-EX 08</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 Arbor Vitae - Woodruff Jt. 1 School District Board of Education to expel the above-named pupil from the Arbor Vitae - Woodruff Jt. 1 School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 26, 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 January 31, 2003, from the district administrator of the Arbor Vitae - Woodruff Jt. 1 School District. The letter advised a hearing would be held on February 12, 2003 that could result in the pupil's expulsion from the Arbor Vitae - Woodruff Jt. 1 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 while at school or under the supervision of school authority which endangered the property, health, or safety of others and that he was guilty of repeatedly neglecting to obey school rules. The letter specifically alleged that on January 17, 2003, while at school, he possessed and used a controlled substance; on January 28, 2003 while on a school field trip he possessed tobacco; on January 27, 2003 at school, he possessed and used tobacco; and on October 28, 2002 he possessed liquor in his school locker. He was also accused of engaging in inappropriate behavior on thirteen other specific days during the school year.

The hearing was held in closed session on February 12, 2003. 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 and that he repeatedly refused or neglected to obey school rules. 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 February 12, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the remainder of the 2002-03 school year with an opportunity for conditional readmission beginning March 3, 2003. 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 father's appeal letter first complains that he was not notified on the January 17, 2003 and January 27, 2003 incident until January 28, 2003. As previously discussed, the state superintendent's authority is generally limited to reviewing whether the statutory procedural requirements have been met. When a parent receives notice of misconduct as described in this case is not part of the statutory procedural requirements. Furthermore, it appears from the record that the school's principal did not know about the misconduct until January 27, thus he could not have told the parents any earlier than that.

The father also complains that there was gross misconduct, negligence and wrongdoing by the principal and the school administration. These allegations are not supported by the record. The father vaguely refers to the use of hearsay evidence at the hearing. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). It was within the board's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111 N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No.

244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

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

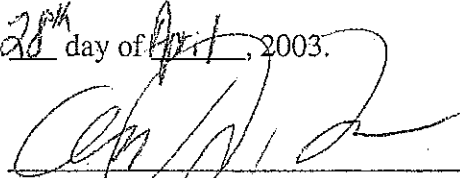
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jason M. _____ by the Arbor Vitae - Woodruff Jt. 1 School District Board of Education is affirmed.

Dated this 28th day of April, 2003.



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