

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  Michael A. W  by Oak Creek School District Board of Education	DECISION AND ORDER  Appeal No.: 03-EX15
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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 Oak Creek School District Board of Education to expel the above-named 15 year old pupil from the Oak Creek School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 11, 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 13, 2003, from the district administrator of the Oak Creek School District. The letter advised a hearing

would be held on May 19, 2003 that could result in the pupil's expulsion from the Oak Creek School District through his 21st birthday. The letter was sent separately to the pupil and his parents by a process server. 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, 2003, he possessed a dangerous weapon on school premises.

The hearing was held in closed session on May 19, 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. 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 23, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday with an opportunity for probationary readmission in September 2004. 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 in this case raises several issues. First, the parent alleges that some evidence should not have been presented to the board. The parents claim that it was unfair for the associate principal to read his statement concerning the discovery of the knife in Michael's backpack. The parents also object to the associate principal's testimony that Michael also possessed the knife at school on May 7. Finally, the parents allege that it was improper to show the actual knife to the board. They argue that a photocopy of the knife should have been sufficient.

It is not a procedural violation for the associate principal to read his statement to the board. 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). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

While Michael was given notice that the hearing concerned his possession of the knife at school on May 8, the reference to Michael's possession of the knife on May 7 does not require reversal. The largess of the evidence concerned his admitted possession of the knife at school on May 8. More importantly, the school board, in its findings, restricted its decision to the conduct that occurred on May 8.

The parents also believe that it was inappropriate to show the school board the actual knife that Michael had brought to school. It is not a procedural violation to show the school board the actual evidence. In fact, first person evidence, such as the actual witnesses and the actual physical evidence, should be encouraged to ensure fair fact finding.

The parents also allege that the manifestation determination was unfair. The school district conducted a manifestation determination prior to its final decision to seek expulsion. The IEP team determined that while Michael is a child with a disability, his disability was not the cause of his behavior. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. In order to challenge a finding by the manifestation determination team, the pupil must avail himself of the due process appeal procedures provided under subchapter V of Chapter 115, Wisconsin Statutes, and PI Chapter 11, Wisconsin Administrative Code. See *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996); and *John Michael N. v. Random Lake School District Board of Education*, Decision and Order No. 331 (August 5, 1997). Information regarding this procedure can be obtained from the school district. In addition, the department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://www.dpi.state.wi.us/dpi/dlsea/een/index.html>.

Finally, the parents allege that the term of expulsion is too harsh. Expulsions based upon possession of a knife at school have been routinely upheld by the State Superintendent. *Stacey R. v. Milwaukee School District*, Decision and Order No. 362 (June 1, 1998); *James D. v. Greenfield School District*, Decision and Order No. 352A (April 7, 1998); *Michael L. v. New Richmond School District*, Decision and Order No. 326 (June 2, 1997); and *Jesse P. v. Hustiford School District*, Decision and Order No. 293 (June 10, 1996). Furthermore, 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.

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.

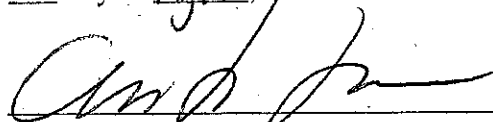
### CONCLUSIONS OF LAW

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 Michael A. W by the Oak Creek School District Board of Education is affirmed.

Dated this 5<sup>th</sup> day of August, 2003.



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