

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Zachary St by Oconomowoc Area School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 03-EX16</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 Oconomowoc Area School District Board of Education to expel the above-named pupil from the Oconomowoc Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 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 March 7, 2003, from the district administrator of the Oconomowoc Area School District. The letter advised a

hearing would be held on March 27, 2003 that could result in the pupil's expulsion from the Oconomowoc Area School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused to or neglected to obey the school rules and that he 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 March 5, 2003, the pupil was under the influence of and in possession of a controlled substance during school hours on school property.

The hearing was held in closed session on March 27, 2003. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father 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 April 7, 2003, was mailed separately to the pupil and his parent¹. The order stated the pupil was expelled through the pupil's 21st birthday with an opportunity for probationary readmission at the beginning of the 2004-05 school year. A transcript of the hearing is part of the record.

¹ An amended expulsion order was mailed on April 28, 2003 to clarify when the pupil must sign a behavioral contract to be eligible for probationary readmission.

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 does not raise any issues, it merely states that the pupil and his father wish to appeal the expulsion. In a subsequent letter filed in response to a briefing schedule, the pupil's parent alleges that the expulsion should be overturned or, alternatively, that the school board should be required to get different counsel because of a conflict of interest. The

parent believes that because the school board president is his personal attorney (in matters not concerning the expulsion), that it was improper for the board's attorney to send the school board president any materials concerning the expulsion. This does not constitute a conflict of interest. First, the school board attorney does not have an attorney client relationship with the pupil or his father. Secondly, the school board attorney must communicate with his client. The school board president is the representative of his client. Finally, the board president did not hear the expulsion case, so any personal conflict he may or may not have is immaterial.

Despite the lack of any allegations by the parent, I have reviewed the record in this case and find the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

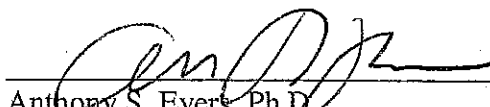
CONCLUSIONS OF LAW

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 Zachary S. . . . by the Oconomowoc Area School District Board of Education is affirmed.

Dated this 28th day of August, 2003.



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