

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Daniel C. by Whitewater School District Board of Education	DECISION AND ORDER Appeal No.: 03-EX19
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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 Whitewater School District Board of Education to expel the above-named pupil from the Whitewater School District. This appeal was filed by the pupil and received by the Department of Public Instruction on October 21, 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 September 16, 2003, from the district administrator of the Whitewater School District. The letter advised a

hearing would be held on September 23, 2003 that could result in the pupil's expulsion from the Whitewater School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified mail on September 18, 2003. 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 repeatedly refused or neglected to obey school rules. The letter specifically alleged that on September 9, 2003 while at Whitewater Middle School, the pupil possessed a knife, cigarettes, matches, lighter, and a baggie of green chopped up vegetation which he showed to other students as "weed".

The hearing was held in closed session on September 23, 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 September 23, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the beginning of the 2004-2005 school year. Minutes of the school board expulsion hearing and a transcript of the 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 alleges that the school district did not comply with the procedural requirement that the pupil and his parents be sent a notice of the expulsion hearing five days before the hearing. The parent alleges that the notice sent to the pupil was received on September 19 and the notice sent to the parents was not received until September 25, 2003. The

school district has provided evidence that it sent, by certified mail, a letter advising the pupil and his parents of the September 23, 2003 expulsion hearing on September 18, 2003. The record also indicates that the school's principal attempted to hand deliver notice of the expulsion hearing to the pupil's parent on September 17, 2003 when the parent brought the pupil to school. However, the parent refused to accept the letter. A parent or pupil cannot prevent an expulsion hearing from taking place by refusing to accept notice or refusing to accept certified mail. Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing shall be **sent** to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. (Emphasis added). The statute requires that a hearing be held no less than five days after the notice of expulsion hearing is sent. See sec. 120.13(1)(c)4, Stats. These five days include weekends and holidays. *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213, (December 20, 1993); *Joshua K. v. Clinton Community School District Board of Education*, Decision and Order No. 216, (January 31, 1994); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222, (March 10, 1994). The state superintendent has previously upheld an expulsion when the notice was sent on the 18th day of the month and the hearing was held on the 23rd day of the month. *Jamie L. W. v. Hudson School District Board of Education*, Decision and Order No. 419 (June 15, 2000). Thus, I find that the school board complied with this procedural requirement.

The pupil's parent also alleges that the pupil was illegally kept from attending school at the conclusion of the initial five day suspension. First, the state superintendent has no authority under an expulsion appeal to review a district's use of suspension. *Madison Metropolitan School District (Lenny C.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). Furthermore, it appears that the district did comply with the suspension statute, §120.13(1)(b). It initially

suspended the pupil for five days, then when it decided to pursue expulsion it extended the suspension for an additional five days. §120.13(1)(b)2. Notice of this decision was contained in the notice of the expulsion hearing that the pupil's father refused to take from the principal on September 17, 2003.

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 Daniel C. by the Whitewater School District Board of Education is affirmed.

Dated this 19th day of December, 2003.



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