

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Nicholas L. B</p> <p>by Bayfield School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 03-EX22</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 Bayfield School District Board of Education to expel the above-named pupil from the Bayfield School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 8, 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 October 31, 2003, from the district administrator of the Bayfield School District. The letter advised a hearing would be held on November 4, 2003 that could result in the pupil's expulsion from the Bayfield School District through the pupil's 21st birthday. The letter was sent to the pupil's mother. 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 October 23, 2003 the pupil sold and attempted to sell a prescription drug while at school.

The hearing was held in closed session on November 10, 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 November 11, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2003-04 school year. In a supplemental order dated December 12, 2003, the board included an opportunity for early readmission at the beginning of the 4th quarter. 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 appellant raises three issues: That the pupil was not given proper notice of the expulsion hearing; that hearsay was used in the expulsion hearing; and, that special education laws were not followed.

The district erred when it failed to mail a separate notice of the expulsion hearing to the pupil. Section 120.13(1)(c)4. requires the school district to send notice of the expulsion hearing to the pupil and his or her guardian. When the word “and” is used in a statute, it means both of the stated requirements must be met. *Trojan v. U.W. Board of Regents*, 128 Wis. 2d 270, 273 (1985). Also, when the legislature amended the statute in 1973, it specifically extended to individual pupils the right to prior notice of the hearing. Laws of 1973, ch. 94. Before the 1973 amendment, these individual pupil rights did not exist in the law. The state superintendent has routinely held the notice requirements in §120.13(1)(c) are mandatory in nature and failure to comply with the statute requires reversal of the expulsion order, even if both the pupil and the parent appear at the expulsion hearing. See *Michelle R. v. Suring Public Schools Board of Education*, Decision and Order No. 126 (March 7, 1985), citing *Muskego-Norway Consolidated Schools v. WERB*, 32 Wis. 2d 478, 83 (1967); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990); *Russell B. v. Muskego-Norway School District*, Decision and Order No. 175 (February 29, 1991); *Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Phillip c. v. Wausaukee School District Board of Education*, Decision and Order No. 280 (March 22, 1996). *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996). “To find otherwise would eviscerate the legislature’s clear directive that pupil and parental rights are to be treated as distinct and separate in these matters. Although pupil and parental interests may frequently coincide, that is not always the case and the legislature has clearly directed school districts not to assume these interests to be one in the same.” *Issac S. v. Milwaukee Public School District*, Decision and Order no. 187 (April 21, 1992). If the district chooses, it may remedy this error by providing proper notice of the expulsion hearing, rehearing

the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415 (May 24, 2000); *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

The appellant also alleges that the board improperly relied upon hearsay evidence at the expulsion 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). 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). Therefore, the board did not impermissibly rely on hearsay evidence.

Finally, the pupil alleges that the board did not fully comply with special education laws. The pupil alleges that he did not get notice of the manifestation hearing, that there was inadequate time to prepare for it and that he was not properly represented at the hearing. 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. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c).¹ *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. 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>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion.

¹ 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.

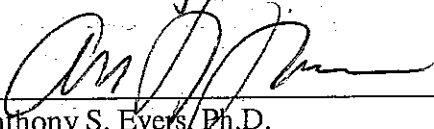
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nicholas L. B. by the Bayfield School District Board of Education is reversed.

Dated this 3rd day of February, 2004.



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