

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Zachary J. C by Reedsburg School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 04-EX02</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 Reedsburg School District Board of Education to expel the above-named pupil from the Reedsburg School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 11, 2004.

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 2, 2003, from the district administrator of the Reedsburg School District. The letter advised a hearing would be held on May 7, 2003 that could result in the pupil's expulsion from the Reedsburg School District

through his 21st birthday. 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. The letter specifically alleged on April 25, 2003, the pupil possessed a firearm in a school building.

The hearing was held in closed session on May 7, 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 possessed the firearm and ammunition while at school. The order for expulsion containing the findings of fact and order of the school board, dated May 8, 2003, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until his 18th birthday with an opportunity for early readmission at the beginning of the 2004-05 school year. In a supplemental order issued by the board on January 24, 2004, the board explicitly found that the interests of the school demanded his expulsion. 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 appeal letter in this case raises several issues. Many of the issues concern the application of the suspension statute, §120.13(1)(b). In an expulsion appeal, the state superintendent does not have authority to review the district's compliance with the suspension statutes. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). I note, however, that it appears from the parents' letter as well as the district's response that basic due process was afforded the pupil during the suspension process.

Next, the parents complain that they were given inadequate notice of the expulsion hearing. The notice of hearing contained all statutorily required elements and was sent on May 2, 2003, five days before the hearing. See Wis. Stats. §120.13(1)(c)4. Thus, the notice was adequate.

Next, the parents complain that records were wrongfully released from the police department to the school district, citing Wis. Stats. §938.396(1m)(a) – (b). The parents also complain that they were not notified by the school district that they received the police reports thus violating Wis. Stats. §118.127(1). The state superintendent does not have authority to determine whether the police department complied with statutory and police department policy requirements. However, §938.396(1)(am) clearly authorizes the police department to release records to a school district if the

records concern a juvenile who illegally possessed a dangerous weapon. Similarly, the state superintendent does not have authority to review compliance with pupil records requirements in §118.127 in an expulsion appeal because the expulsion appeal is limited to determining compliance with the expulsion statutes. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). While the record does not completely address whether the parents were notified that the school received police reports concerning the pupil and the firearm possession, it appears that the parents were at least informed in writing by the district that it knew citations were issued by the police department. Furthermore, the police reports were provided to the parents at the expulsion hearing. Thus, even if the district did not notify the parents about the receipt of law enforcement records before the expulsion hearing, the parents now have notice and any error has been corrected.

The parents also complain that the expulsion period is too long and that the pupil received a harsher punishment than other students. Because expulsions are considered on a case-by-case basis, the treatment of other students is generally not considered in an expulsion appeal. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). 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, to second-guess the appropriateness of a school board's determination.

Finally, the parents complain about the early readmission conditions included in the expulsion order. The early reinstatement conditions can only be appealed to the school board, not the state superintendent. Wis. Stats. §120.13((1)(h)2). Therefore, I have no authority to review the appropriateness of the conditions.

While I find that none of the issues raised by the parents justify reversing the expulsion, I do find a procedural error that requires reversal of the expulsion order. The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. *John K. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 178 (May 17, 1991). The expulsion order contained a very complete list of factual findings; however, it did not explicitly reflect the statutory basis for the expulsion.¹ This is required and failure to include that finding requires me to reverse the expulsion. Nevertheless, it may be possible for the board, without completely rehearing the case, to correct this error. The board may reconvene and use the record of the expulsion hearing to determine whether the facts of misconduct found in the expulsion order satisfy the legal conclusion 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 board may then issue an order that complies with the statutory requirements.

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. This decision does not condone the pupil's

¹ The original expulsion order was also deficient in that it did not make a finding that the interests of the school demanded expulsion. However, the supplemental order issued in January 2004 did contain that finding and found that it existed at the time of the original expulsion order.

conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

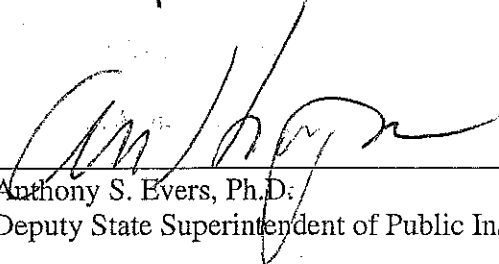
CONCLUSIONS OF LAW

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 Zachary J. C. by the Reedsburg School District Board of Education is reversed.

Dated this 8th day of April, 2004.



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