

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Shannon W. by Shorewood School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 04-EX09</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 Shorewood School District Board of Education to expel the above-named pupil from the Shorewood School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 29, 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 February 20, 2004, from the district administrator of the Shorewood School District. The letter advised a

hearing would be held on February 25, 2004 that could result in the pupil's expulsion from the Shorewood School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by certified and regular 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 that on February 11, 2004 the pupil possessed a weapon (pellet gun) while at school¹.

The hearing was held in closed session on February 25, 2004. 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 February 27, 2004, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 30, 2006 with an opportunity for early readmission in September 2005. A transcript of the hearing is part of the record.

¹ The district also alleged that because the pupil brought the weapon, he possessed a firearm as defined in 18 USC 921 (a)(3). Generally, a pellet gun does not meet the definition of firearm contained in 18 USC 921 (1)(3). A firearm must be designed to or may readily be converted to expel a projectile by the action of an explosive; however, a pellet gun is usually powered by air, not explosives. The police liaison officer testified that the weapon was not a firearm. Therefore, the district is not required to follow the mandates of 120.13(1)(c)2m. Based on the transcript of the hearing, it is clear the board understood the weapon was not a firearm and did not base its decision and order on any mandate in 120.13(1)(c)2m.

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 filed by an attorney representing the pupil did not raise any specific issues concerning the expulsion² nor did he file a subsequent brief or letter. In reviewing the

² The letter of appeal indicated that he wanted to appeal regarding the pupil's disability and manifestation determination. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area*

record in this case, I find the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

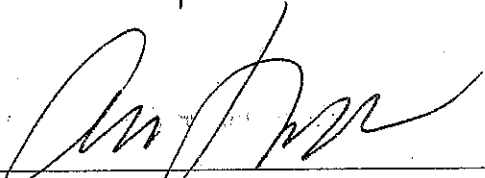
CONCLUSIONS OF LAW

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 Shannon W. by the Shorewood School District Board of Education is affirmed.

Dated this 25th day of May, 2004.



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

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 and manifestation determinations 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/dlse/cen/index.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.