

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of Curtis B by Marinette School District Board of Education	DECISION AND ORDER Appeal No.: 04-EX14
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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 Marinette School District Board of Education to expel the above-named pupil from the Marinette School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 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 April 8, 2004, from the district administrator of the Marinette School District. The letter advised a hearing

would be held on April 19, 2004 that could result in the pupil's expulsion from the Marinette School District through the pupil's 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 5, 2004 while riding on a school bus returning from a school baseball game, the pupil made a bomb threat and displayed it in the back window of the school bus.

The hearing was scheduled for April 19, 2004. The pupil and his parents were represented by an attorney. Prior to the hearing, the pupil's attorney and the school district's attorney reached a stipulated settlement concerning the expulsion. The stipulation was signed by the pupil, his father and approved by the school district. The stipulation established that the stipulation would serve as the record of the hearing. The stipulation was presented to the school board. The stipulation provided the factual basis for the expulsion as well as the legal conclusion the conduct could endanger the health and safety of others. It also was agreed that the interest of the school district warranted and required the expulsion. It was agreed that the pupil would be expelled for the remainder of the 2003-04 school year and the entire 2004-05 school year. It allowed the pupil to be conditionally readmitted immediately. The conditions of his readmission included continued counseling and no serious violations of school rules. The stipulation was presented to the school board; however, the school board was not willing to agree to the terms of the stipulated expulsion unless the pupil also agreed to refrain from participation in any extra curricular activities. After consultation with his attorney, the pupil agreed to the additional provision barring participation in extra curricular activities for the balance of the 2003-04 school year. Accordingly, the board accepted the stipulation and entered an order incorporating the

terms of the written stipulation and adding the verbally agreed upon condition that the pupil be barred from extra curricular activities for the remainder of the 2003-04 school year. The order for expulsion containing the findings of fact and conclusions of law of the school board, dated April 28, 2004, was mailed separately to the pupil and his parents.

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 complains that the pupil was not given a hearing. The record clearly demonstrates that the pupil waived the hearing by signing the stipulation and verbally agreeing to the modification offered by the school board. The decision was made after consultation with his attorney and his father. It is disingenuous to now complain that he was not given a hearing. The father, through the appeal letter, complains that the signed stipulation should not have been modified by a later verbal agreement. The only difference between the written stipulation and the verbal agreement that led to the final expulsion order is the exclusion from extra curricular activities through the end of the 2003-04 school year. There is no indication in the record that the verbal agreement was not valid. Furthermore, the 2003-04 school year is now over, thus this additional punishment has no further effect.

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.

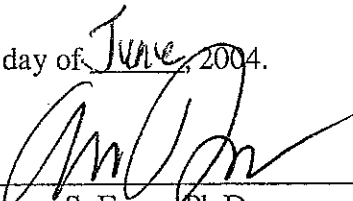
CONCLUSIONS OF LAW

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 Curtis B. by the Marinette School District Board of Education is affirmed.

Dated this 25th day of June, 2004.



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