

THE STATE OF WISCONSIN  
BEFORE  
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p style="text-align:center">Laura F</p> <p>by West Allis School District Board of Education</p>	<p style="text-align:center">DECISION AND ORDER</p> <p style="text-align:center">Appeal No.: 04-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 West Allis School District Board of Education to expel the above-named 10<sup>th</sup> grade pupil from the West Allis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on October 27, 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 September 21, 2004, from the district administrator of the West Allis School District. The letter advised a hearing would be held on September 27, 2004 that could result in the pupil's expulsion from the West Allis School District. The letter was sent separately to the pupil and her 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 that on September 14, 2004 she had a half empty bottle of wine in her locker at school.

The hearing was held in closed session on September 27, 2004. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 September 30, 2004, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the 2004-05 school year with an opportunity for early readmission on January 25, 2005. 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 pupil raises one issue on appeal. She alleges that the notice of the expulsion hearing was untimely. Wisconsin Statutes §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. “Sent” is not the same as received. *Derek D. v. Flambeau School District Board of Education*, Decision and Order No. 451 (January 28, 2002). These five days include weekends and holidays.<sup>1</sup> *Lori P. v. Cudahy School District Board of Education*, Decision and Order No. 169 (May 21, 1990); *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); *Travis J. M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423, (September 25, 2000). In this case, the notice was sent six days before the hearing and received three days before the hearing. Therefore, there was no statutory violation.

Furthermore, the timeliness issue was raised and addressed at the expulsion hearing. The parents informed the board that they were not able to retrieve the notice of expulsion hearing from the post office until 4:45 pm on September 24, 2004. (The hearing was held at 8:00 am on September 27, 2004).

However, after discussions with the school board, the parents and the pupil chose to waive any time limit issue and proceed with the hearing so that the pupil would not miss more school. The pupil's attorney

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<sup>1</sup> In the pupil's reply brief, the pupil argues that Wis. Stats. §801.15(1)(b) requires the exclusion of weekends from the five day calculation. However, this argument has previously been explicitly rejected by the state superintendent. *Lori P. v. Cudahy School District Board of Education*, Decision and Order No. 169 (May 21, 1990).

argues that this waiver was involuntary. There is no evidence in the record that it was involuntary or coerced. Furthermore, as previously stated, there was not violation of the time lines that required waiver.

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.

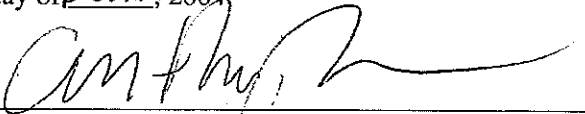
### CONCLUSIONS OF LAW

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 Laura F. \_\_\_\_\_ by the West Allis School District Board of Education is affirmed.

Dated this 20<sup>th</sup> day of December, 2004.

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