

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Chelsea N</p> <p>by Appleton Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 04-EX25</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 Appleton Area School District Board of Education to expel the above-named pupil from the Appleton Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 2, 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 October 13, 2004, from the district administrator of the Appleton Area School District. The letter advised a

hearing would be held on October 21, 2004 that could result in the pupil's expulsion from the Appleton Area School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents. 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 and that she endangered the property, health or safety of a school authority or any employee or school board member of the school district. The letter specifically alleged that on October 8, 2004, the pupil possessed a marijuana pipe with possible resin inside while at school.

The hearing was held in closed session on October 21, 2004. The pupil and her parents appeared at the hearing represented by an attorney. 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, including the property, health, or safety of a school authority, any employee or school board member of the school district. 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 October 28, 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 at the beginning of the second semester of the 2004-05 school year. 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 student alleges that suspension procedures were not followed and that the expulsion was unduly harsh. Suspension and expulsion proceedings are two separate types of proceedings governed by different sections of the statutes. Suspensions are governed by § 120.13(1)(b) [emphasis added], which states:

§ 120.13(1)(b)2: The school district administrator or any principal...may suspend a pupil for not more than 5 school days or, if a notice of expulsion hearing has been sent under par. (c)4...for not more than a total of 15 consecutive school days....

Expulsions are governed by §120.13(1)(c), et. seq. [emphasis added]. The state superintendent lacks jurisdiction to review suspensions. The state superintendent's jurisdiction for review only covers the expulsion proceedings, which commence with the expulsion hearing notice. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

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.*

I 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 or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In this case, the board heard the testimony of the school personnel, the pupil and her parents. When the board decided upon expulsion, it offered the pupil an opportunity for early readmission. In reviewing this case, I do not see an extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

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.

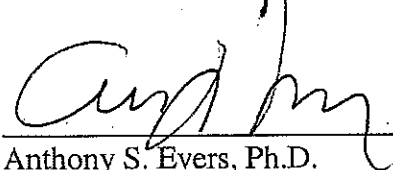
CONCLUSIONS OF LAW

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 Chelsea N. [redacted] by the Appleton Area School District Board of Education is affirmed.

Dated this 28th day of January, 2005.



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

