

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Alex M</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 04-EX28</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 Racine Unified School District Board of Education to expel the above-named 17 year old pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 21, 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 November 3, 2004, from the principal of the Horlick High School of the Racine Unified School District. The

letter advised a hearing would be held on November 15, 2004 that could result in the pupil's expulsion from the Racine Unified 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 not at school or under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority or endangered the property, health, or safety of any employee or school board member of the school district in which the pupil is enrolled. The letter specifically alleged that on October 21, 2004 the pupil was arrested because he had detonated a pipe bomb that caused injury to a minor and that upon a subsequent search of his house the following items were found: four more pipe bombs, explosive making materials, internet downloads related to bomb making, and a map of the school with areas of the school highlighted.

The hearing was held by an independent hearing officer on November 15, 2004. The pupil and his parents did not appear. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. After the hearing, the hearing officer found the pupil did engage in conduct while not at school while under the supervision of a school authority which endangered the property of the school, students and faculty.<sup>1</sup> The hearing officer further found that the interests of the school demand the student's expulsion. The order stated the pupil was expelled through the 2008-09 school year<sup>2</sup>, with an option to appeal to the hearing officer

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<sup>1</sup> The order prepared by the hearing examiner indicates the grounds for expulsion is "engaged in conduct while at school or under the supervision of a school authority which endangered the health, safety or education of others at school." Based upon the written report of the hearing, the hearing officer clearly found that the conduct occurred not on school property but did endanger school property, students and faculty. Thus, the written order appears to be a scrivener's error. To clarify the record, it is recommended that the hearing officer correct his written order to reflect the actual findings he made.

<sup>2</sup> Again, the written order does not reflect the written report of the hearing. The written order indicates the pupil is expelled permanently, from 11/15/04 through 6/8/05, with an opportunity for reconsideration in two years then adds parenthetically the 2008-2009 school year. Obviously, this makes no sense. The written report of the hearing indicates the expulsion goes through the 2008-2009 school year with a notation that it is permanent. For this pupil, because of his age, the 2008-09 school year is tantamount to a permanent expulsion. The written order should be corrected.

after two years for reconsideration. Minutes of the expulsion hearing and an audiotape of the expulsion hearing are part of the record. The recommended order for expulsion containing the findings of fact and conclusions of law, dated November 15, 2004, was mailed separately to the pupil and his parents. On December 13, 2004, the school board adopted the recommendations of the hearing officer, expelling the pupil through the 2008-09 school year.

### 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 the pupil's mother, alleges that the school board did not have authority to expel the pupil because she had withdrawn him from school and filed home schooling papers with the Department of Public Instruction on or about November 3, 2004. The parent's act of withdrawing the pupil does not negate the school's authority to take action for conduct that occurred while the pupil was enrolled. "It is the policy of the State of Wisconsin that students cannot drop-out and re-enroll in school at whim." *Bradley B. v. Spooner School District*, Decision and Order No. 107 (February 15, 1983), cited in *Alexander P. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 372 (November 23, 1998). There is no dispute that the pupil was enrolled at the school when he was arrested for the aforementioned conduct, therefore, the school board did not lose authority to expel the pupil even though he withdrew from the school prior to the expulsion hearing.

The parent also explains why they did not appear at any of the hearings and meetings held by the school concerning the pupil's suspension and expulsion. They assert that an attorney advised them not to attend. The parents chose this course of action but the school is not obligated to delay its proceedings because the parents chose not to participate.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. I, therefore, affirm this expulsion.

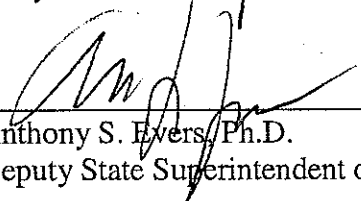
#### **CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of §120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Alex M... by the Racine Unified School District Board of Education is affirmed.

Dated this 15<sup>th</sup> day of February, 2005.

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

