

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Anthony B.</p> <p>by Ladysmith-Hawkins School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 05-EX 01</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 Ladysmith-Hawkins School District Board of Education to expel the above-named pupil from the Ladysmith-Hawkins School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 19, 2005.

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 December 17, 2004, from the high school principal of the Ladysmith-Hawkins School District. The letter

advised a hearing would be held on January 10, 2005 that could result in the pupil's expulsion from the Ladysmith-Hawkins 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 that on the morning of December 14, 2004 the pupil possessed and consumed beer on a school bus.

The hearing was held in closed session on January 10, 2005. 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 January 13, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2004-05 academic year, with an opportunity to earn high school credit through P.A.S.S. correspondence courses during 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.

In the appeal letter, the parent raises concerns about the questioning of her child by the police without her presence or without advising the pupil of any right to remain silent. It was not improper for the school board to rely on the evidence that resulted from the interview. Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may

demand the exclusion of illegally obtained evidence does not apply to administrative expulsion hearings. See e.g. *In the Interest of Thomas J.W.*, 213 Wis. 2d 264, 276 (Ct. App. 1997); *State v. Carpenter*, 197 Wis. 2d 252, 541, N.W. 2d 05 (1995); *State ex re. Struzik v. DHSS*, 77 Wis. 2d 216, 221 (1977). This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). Moreover, there is no evidence that the admission was obtained illegally. There is no evidence that the pupil was subjected to a custodial interrogation. Finally, there is no statutory or other requirement that parents be notified prior to a police or school employee interview of a pupil. The board was free to determine whether the pupil's admission that he possessed and consumed beer on the school bus was reliable. This is a credibility determination that is solely within the discretion of the board.

Secondly, the parent complains that the other pupil involved in the incident was not expelled. Because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998). Furthermore, 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. 1 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 reviewing this case, I do not see the 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.

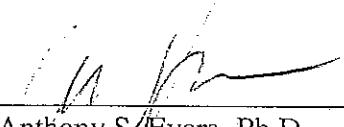
CONCLUSIONS OF LAW

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 Anthony B. by the Ladysmith-Hawkins School District Board of Education is affirmed.

Dated this 21st day of March, 2005.



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