

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Andres M...</p> <p>by Milwaukee Public School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 05-EX 03</p>
---	---

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 Milwaukee Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 17, 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 January 5, 2005, from the student services coordinator of the Milwaukee Public School District. The letter

advised a hearing would be held on January 26, 2005 that could result in the pupil's expulsion from the Milwaukee School District.¹ The letter was sent separately to the pupil and his parents by messenger service. 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 November 29, 2004 he possessed marijuana while on school grounds.

The hearing was held in closed session on January 26, 2005 before an independent hearing panel. Neither the pupil nor his parent appeared at the hearing. 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 independent hearing panel deliberated. The panel 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 panel 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 26, 2005, was referred to the school board for approval. The board met on January 27, 2005 and approved the expulsion order. The order and notice of the board's action was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 15, 2005. A transcript of the hearing is part of the record.

¹ An earlier notice was sent to the pupil and his parent advising of an expulsion hearing on January 5, 2005. On the day of the hearing, the pupil's mother called and said they could not come to the hearing because someone was ill. The school agreed to reschedule it to January 26.

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's appeal letter requests that his expulsion be shortened because he did well in his alternative school setting during the time between his suspension and expulsion. 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 independent hearing panel 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 this 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. If the pupil would like the board or panel to reconsider its decision in light of this information, he should contact the school district directly. I note, however, that the district is not required to entertain such a request. Also, the pupil has since moved out of the school district. Therefore, he may want to contact his district of residence to determine if they will allow him to enroll. However, the new district is not required to enroll him during the term of his expulsion. Wis. Stats. §120.13(1)(f).

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 Andres M..... by the Milwaukee School District Board of Education is affirmed.

Dated this 11th day of April 2005.



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

