

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of C. E. W. by Kenosha Unified School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 05-EX 06</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 Kenosha Unified School District Board of Education to expel the above-named pupil from the Kenosha Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 2, 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 6, 2005, from the district administrator of the Kenosha Unified School District. The letter advised a hearing would be held on January 14, 2005 that could result in the pupil's expulsion from the Kenosha Unified School District. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil

engaged in conduct while at school which endangered the health and safety of others. The letter specifically alleged that on numerous occasions during the 2004-05 school year, the pupil sexually harassed a female student by making verbal remarks, touching her private parts without consent, and causing her to touch his private parts without her consent.

The hearing was held in closed session before a duly appointed hearing officer on January 14, 2005. The pupil and his mother 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 hearing officer found the pupil did engage in conduct while at school which endangered the health and safety of others. The hearing officer 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 hearing officer, dated January 17, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through end of the 2004-05 school year with an opportunity to attend the BRIDGES program at the school district.¹ On January 26, 2005, the school board affirmed the hearing officer's findings but extended the term of the expulsion until the first semester of the 2005-06 school year. Minutes of the 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

¹ This was allowed, even though the pupil's mother admitted he does not actually live in the Kenosha School District. (Apparently, after school he goes to his aunt's house that is in Kenosha).

§ 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 parent, alleges that her son did not get a fair hearing. The mother does not believe her son could have engaged in such acts. She believes all the other witnesses lied. She claims that after the hearing, a witness stated that he only made a statement against the pupil because a school person told him they had a videotape of the pupil harassing the other female student. It is interesting to note, however, that according to the parent, this witness does not claim that he gave false information to the school in the course of the investigation, only that his motivation was based on a videotape that may or may not exist. The hearing officer heard from school officials and reviewed the written statement made by the victim to a Kenosha police detective. In addition to relaying the information related to the assault on this victim, the school officials also informed the hearing officer that the pupil had engaged in similar behavior in the past, was warned about it, and was receiving counseling from a school counselor. The pupil had an opportunity to present whatever testimony he wanted. The pupil testified, revealing that in the past school year he had similar probable violations and that he had

previously brought a knife to school. The pupil presented no other factual witness. His mother and grandfather testified to his character and about their complaints about the process.

The hearing officer was in the best position to resolve this testimony. It is within the hearing officer's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

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.

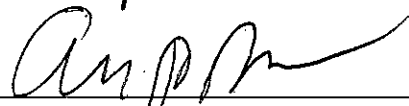
CONCLUSIONS OF LAW

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 C E W by the Kenosha Unified School District Board of Education is affirmed.

Dated this 25 day of April, 2005.



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