

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Al T.</p> <p>by Oregon School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 05-EX 12</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 Oregon School District Board of Education to expel the above-named pupil from the Oregon School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 31, 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 February 10, 2005, from the district administrator of the Oregon School District.¹ The letter advised a hearing would be held on February 17, 2005 that could result in the pupil's expulsion from the Oregon 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 February 3, 2005, the pupil was under the influence of marijuana while at school.

The hearing was held in closed session on February 22, 2005.² 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 February 22, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through

¹ According to the minutes of the expulsion hearing, a first notice was hand delivered to the pupil and his parents on February 9, 2005. The February 10 notice was a corrected notice. A third notice was sent on February 17, 2005 advising of a new date of February 22, 2005. As discussed later in this opinion, the February 17, 2005 postponement was granted at the pupil's request.

² The February 17, 2005 hearing was postponed at the request of the pupil.

the 2007-2008 school year with an opportunity for early readmission after June 8, 2005.

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 appeal letter in this case raises one issue for consideration. The pupil's attorney alleges that the hearing should have been postponed a second time because she (the attorney) was not available to attend the February 22, 2005 hearing. This argument is rejected. The record clearly shows that the pupil was given adequate notice of the hearing. On February 9, he and his parents were advised that a hearing was going to be held on February 17. The day of the hearing, the pupil's mother told the district that she needed an adjournment of the hearing because they had just decided to hire a lawyer to represent them at the hearing. Despite this late request, the school board graciously granted the postponement. When the parents were told that the adjournment would be granted they were also informed of the new date and time, February 22, 2005 and they agreed to this new date. A new written notice was also sent to the pupil and his parents advising them of the new date and time. On February 18, 2005, the school board's attorney sent a confirming e-mail for the February 22 hearing to the pupil's mother. On February 21, 2005 at approximately 2:45 pm, the board's attorney sent yet another confirming e-mail to the pupil's mother and encouraged her to have her attorney contact him with any questions. At approximately 4:00 pm on February 21, 2005 the pupil's attorney left a message for the board's attorney. This phone call was returned at approximately 4:30 pm. In that phone call, the pupil's attorney confirmed that she was retained on February 21 to represent the pupil, knowing the hearing was scheduled for February 22. At this time, the pupil's attorney told the board's attorney that she would like an adjournment to prepare for the hearing. The board's attorney reasonably asked for a written request and explanation. In a subsequent letter, faxed on the afternoon of February 22, 2005 to the board's attorney, the pupil's attorney alleged that she was unavailable for the hearing scheduled for that evening. Obviously, by this time, the administration had made arrangements for witnesses to appear at the hearing and the board was

expecting to hear the expulsion case. The board met that night and despite urgings from the school board's attorney to appear in person to request the adjournment neither the pupil, his parents, nor his attorney appeared to address the board. The board rejected the request for this adjournment and proceeded with a hearing.

While the pupil has a statutory right to be represented by an attorney at the expulsion hearing, there is no established right to a particular attorney or to a hearing on a particular day as long as sufficient notice has been provided. The pupil has provided no legal support for his contention that he was denied due process under these circumstances. The pupil or his parents made two 11th hour requests for adjournments. Neither request was based on the pupil's physical inability to attend the hearing based on infirmity or incarceration. The first was graciously granted, the second was not. He had 13 days to find an attorney who was available to represent him at the February 22, 2005 hearing. Instead, he waited 7 days to decide to look for an attorney and then he retained an attorney who was not available for the hearing. Furthermore, he did not appear at the hearing to personally ask the board for a second adjournment. The board's decision to proceed was not unreasonable and does not constitute a procedural violation.

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.

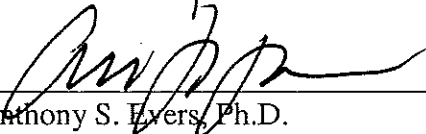
CONCLUSIONS OF LAW

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 A. T. by the Oregon School District Board of Education is affirmed.

Dated this 27th day of May, 2005.



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