

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of D. H. by New Richmond School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 05-EX 16</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 New Richmond School District Board of Education to expel the above-named pupil from the New Richmond School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 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," mailed on February 11, 2005, from the district administrator of the New Richmond School District. The letter

advised a hearing would be held on February 16, 2005 that could result in the pupil's expulsion from the New Richmond 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 8, 2005, the pupil possessed a knife with a four inch blade while at the middle school.

The hearing was held in closed session on February 16, 2005. The pupil and his parent 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 25, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2005-2006 academic year, with an opportunity for early readmission at the beginning of the 2005-06 school year. An audiotape of the expulsion hearing is 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 essentially argues that there is insufficient evidence to support the school board's findings. The pupil and his mother listed several points in the board's conclusions with which they disagree or points that they believe should be included in the board's findings. It has been repeatedly held that arguments concerning the sufficiency of the

evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

The district and the pupil had an opportunity to present and argue the case before the board. As a result, the board is left to determine what evidence to believe and what weight should be given to the evidence. The board was in the best position to resolve this conflict in testimony. It was within the board'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, 111 N.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 this case, the board's conclusions are reasonable and there is no cause to change or modify the board's findings. The pupil was charged with bringing a knife to school. He was found guilty of bringing a knife to school. The circumstances of the day, which included a prearranged fight with another student, aggravated the violation. Whether the pupil was the sole instigator of the fight or one of three who instigated the fight was something the board considered in rendering its decision. The board also rejected the pupil's argument that he should not be found guilty because he did not intentionally bring the knife to school. The board concluded that it did not matter given the fight that was scheduled for later in the day.

In her letter, the pupil's mother also alleges that her son has ADD and should not be expelled. The pupil has not been found to be a child with a disability for education purposes. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://www.dpi.state.wi.us/dpi/dlsea/een/index.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

Finally, the pupil and his parent complain about the conditions placed on him if he chooses to return to school before the expiration of the expulsion period. School board's have the authority to permit conditional readmission, provided the conditions are related to the reason for the expulsion. They take particular exception with the condition that the pupil must refrain from engaging in any further acts of violence on school premises or intimidation towards others at school, as well as refraining from any acts of defiance toward school staff. This condition appears to be related to the circumstances of the expulsion. Therefore, there is no reason to upset the decision made by the board.

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.

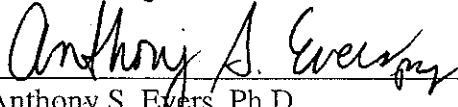
#### CONCLUSIONS OF LAW

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 D. H by the New Richmond School District Board of Education is affirmed.

Dated this 30<sup>th</sup> day of June, 2005.

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