

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  T. J. J.</p> <p>by Madison Metropolitan School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 05-EX 20</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 Madison Metropolitan School District Board of Education to expel the above-named pupil from the Madison Metropolitan School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 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 March 30, 2005, from the expulsion and truancy coordinator for the Madison Metropolitan School District.

The letter advised a hearing would be held on April 15, 2005 that could result in the pupil's expulsion from the Madison Metropolitan School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents by certified and regular 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 March 17, 2005, the pupil possessed an object that could be used as a weapon and used that object, a padlock, to strike another student at East High School.

The hearing was held in closed session before a duly appointed hearing examiner on April 15, 2005. The pupil and her parents appeared at the hearing represented by counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the hearing officer issued a written decision. The hearing officer found that 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 hearing officer further found that the interests of the school demand the student's expulsion. The hearing officer's order expelled the pupil until the beginning of the second semester of the 2005-06 school year, with an opportunity for early readmission at the beginning (September) of the 2005-06 school year. The School board met on May 2, 2005 and adopted the expulsion order, modifying it to allow the pupil an opportunity for early readmission in June 2005. The order for expulsion containing the findings of fact and conclusions of law of the hearing officer, dated April 18, 2005, and order of the school board dated May 2, 2005 was sent separately to the pupil and her parents. A transcript of the 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 alleges that the pupil should not have been expelled because she was acting in self defense. This argument was made at the hearing and specifically considered by the hearing officer. The hearing officer rejected this argument finding that the

pupil used the padlock offensively, rather than defensively, when she hit the other student in the head with the lock six or more times, causing substantial injury. The hearing officer found that this escalated the fight and found that the school's argument that the school must prevent this type of escalation was very persuasive.

The pupil essentially argues that the evidence was insufficient to support these 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 hearing officer was in the best position to resolve any conflicts in testimony, give weight to the evidence and arguments, 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). The hearing officer's decision is supported by a reasonable review of the evidence and will not be overturned.

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.

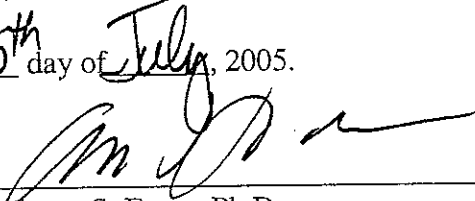
### CONCLUSIONS OF LAW

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 T. J. by the Madison Metropolitan School District Board of Education is affirmed.

Dated this 15<sup>th</sup> day of July, 2005.

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