

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>                  A . . . . S</p> <p>by West Allis School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06 EX-01</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 West Allis School District Board of Education to expel the above-named pupil from the West Allis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 13, 2006.

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 November 21, 2005, from the high school principal of the West Allis School District. The letter advised a

hearing would be held on December 5, 2005 that could result in the pupil's expulsion from the West Allis School District. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil engaged in conduct while not at school or not under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of school authority. The letter specifically alleged that on November 10, 2005<sup>1</sup>, the pupil pointed a gun and made threats toward another student while riding home on a public transit bus.

The hearing was held in closed session on December 5, 2005. 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 not at school or not under the supervision of a school authority which endangered the property, health, or safety of others at school or under the supervision of a school authority. 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 December 9, 2005, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing and a transcript of the hearing are part of the record.

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<sup>1</sup> The conduct actually occurred on November 9, 2005. This error was raised at the expulsion hearing and the pupil and his family chose to go ahead with the hearing rather than reschedule.

## 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 conduct did not occur on school grounds or anywhere near the school and therefore the expulsion should be overturned. The conduct occurred on the way home from school on a county owned bus. The pupil did not take the weapon to school. The pupil was charged with engaging in conduct away from school that

endangered the property, health, or safety of others at school. The district argues that the misconduct meets this statutory ground because the pupil's threats and behaviors were the result of an earlier dispute at school. According to the hearing minutes, the pupil had been harassed by others at school on more than one occasion. On the day before the gun incident, the pupil was called a racial slur. A food fight ensued between the table that called the pupil a racial slur and the table where the pupil was sitting. The pupil then went up to one of the people who made the racial slur and said something to the effect of "I'm going to kill you". There is no indication that the student who may have been threatened at school was the same student who was threatened by the pupil on the bus.

Later that day, on a county bus, Andrew called a student a racial slur and the two pushed and shoved each other. The next day, Andrew took a gun onto the county bus and hid it in the bushes of a local custard shop. After school, Andrew and the student got on the county bus. Andrew got off the bus, retrieved the gun and re-boarded the bus. He then pointed the gun at and threatened the other student.

These allegations do not meet the statutory definition of "engaged in conduct while not at school or not under the supervision of school authority which endangered the property, health, or safety of others at school or under the supervision of school authority." Contrary to the districts contention that this is comparable to *Jason Q. v. Hartford Union High School*, Decision and Order no. 272 (February 9, 1996). This reliance is misplaced. The *Jason Q.* case involved conduct away from school that had a direct connection to on campus behavior. Jason sold drugs and used his connections at school to make the drug deals. The actual drugs that were sold made there way to the school the following day.

The district has not shown that connection in this case. Andrew was taunted at school by some boys. A few days later, Andrew and one of the boys got into a scuffle on the county bus. The next day is when the gun incident occurred. This case is very similar to the *Timothy W.* case. *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997). Timothy used a knife to threaten another student while on a school bus. Even though this was related to conduct at school – Timothy had been taunted at school – the State Superintendent determined it did not meet the legal requirements of the statutory ground for expulsion. Similarly, in *Patrick Lee Y. v. Kenosha Unified School District*, Decision and Order No. 182 (October 9, 1991), the State Superintendent overturned an expulsion relying on the same statutory grounds when Patrick caused severe injuries to a student in a city park, across the street from the school, as the students were on their way to school. Where conduct occurs away from school and outside the supervision of a school authority, it must affect those at school or under the supervision of a school authority. *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997) and *Patrick Lee Y. v. Kenosha Unified School District*, Decision and Order No. 182 (October 9, 1991).

This decision does not condone the pupil's conduct. However, I must uphold the requirements contained in the statutes. In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion.

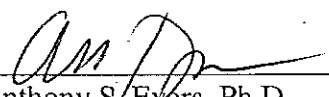
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of A: S. by the West Allis School District Board of Education is reversed.

Dated this 13<sup>th</sup> day of March, 2006.

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