

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>H . H</p> <p>by West Allis School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06 EX 04</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 February 23, 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 January 9, 2006, from the district administrator of the West Allis School District. The letter advised a

hearing would be held on January 16, 2006 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 by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules. The letter specifically alleged that the pupil engaged in numerous rule violations including insubordination, use of tobacco products, and truancy and tardiness. Specifics of the allegations were included in a report enclosed with the notice of expulsion hearing.

The hearing was held in closed session on January 16, 2006. 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 repeatedly refuse or neglect to follow school rules. 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 January 18, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2007-08 school year, with an opportunity for probationary admission at the beginning of the 2007-08 school year. 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 was filed by the pupil's mother. In the letter she objects to how the board characterized the tattoos that are on her son's hands and neck. The pupil was expelled, in part, for failure to cover-up tattoos that he had on his fingers and his neck. The tattoos on his fingers spelled a profane word. He was told to cover two letters so as to hide the word. The pupil refused. He also had a tattoo on his neck that said "TIPPS" that he refused to cover. The school board heard evidence that TIPPS either referred to hollow point bullets (the administration's contention) or that it meant nothing and was just a word that the pupil's friends

made up for him (the pupil's contention.) The administration testified that the tattoos caused a disturbance at school when others began to notice them. The school board concluded, in its findings of fact, that the tattoos were inappropriate, profane, and violent. These findings are not unreasonable. Regardless, the pupil was expelled, in part, because he refused to follow the direction of covering the offensive tattoos, not merely because the tattoos were profane and violent.

The mother also suggests that the pupil should be given a second chance and allowed to return to any high school he wishes to attend. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

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.

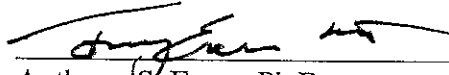
## CONCLUSIONS OF LAW

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 H. H. by the West Allis School District Board of Education is affirmed.

Dated this 21st day of April, 2006.



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