

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>O. H.</p> <p>by Milwaukee Public School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06-EX 05</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 Milwaukee Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 10, 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 February 27, 2006, from the student services coordinator of the Milwaukee Public School District. The letter

advised a hearing would be held before an independent hearing panel on March 6, 2006 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter alleged that the pupil repeatedly violated school rules at the middle school on February 14. More specifically, the letter alleged the pupil was accused of battery to a student.

The hearing was held in closed session on March 6, 2006. The pupil and her parents appeared at the hearing without 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 panel deliberated and found the pupil engaged 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 contained the findings of fact and conclusions of law of the panel, dated March 6, 2006. The order stated the pupil was expelled through March 7, 2007, with an opportunity for early readmission in August or September 2006. 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.

Upon review of the record in this case, I find that the district did not comply with all procedural requirements regarding adequate notice to the pupil and her parents. It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District Board of Education*, Decision and Order No. 408 (February 24, 2000); *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 143 (July 2, 1986).

First, there is no indication in the record whether or when the notice of the expulsion hearing was sent, separately, to the pupil and her parent. Wis. Stats. §119.25.(2)(c) requires that the notice of expulsion hearing be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. Failure to do so requires reversal. See *Michelle R. v. Suring Public Schools Board of Education*, Decision and Order No. 126 (March 7, 1985), citing *Muskego-Norway Consolidated Schools v. WERB*, 32 Wis. 2d 478, 83 (1967); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990); *Russell B. v. Muskego-Norway School District*, Decision and Order No. 175 (February 29, 1991); *Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Phillip c. v. Wausaukee School District Board of Education*, Decision and Order No. 280 (March 22, 1996). *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996).

Secondly, the notice of expulsion hearing stated that the ground for the expulsion recommendation was repeated violation of rules. However, the findings by the panel reflected a finding that the pupil engaged in conduct at school that endangered the property, health, or safety of others at school. Wis. Stats. §119.25(1)(c) adopts the notice requirements found in §120.13(1)(c)4. which provides in part:

120.13 School Board Powers.

(1) (c) 4. Not less than 5 days written notice of the hearing...shall be sent...The notice shall state all of the following:

a. **The specific grounds under subd. 1., 2. or 2m** and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

In *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 21, 1993), my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, the statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. [Citing *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, (May 17, 1991).]

It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statute's requirements renders the expulsion void. Even where a pupil unequivocally admits misconduct that is grounds for expulsion, the failure to provide the mandated, advance statutory notice calls for reversal. See *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Justin E. v. Antigo School District Board of Education*, Decision and Order No. 329 (July 24, 1997); *Ryan G. v. Sparta Area School District*, Decision and Order No. 325 (May 19, 1997); *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178 (May 17, 1991); *Christopher K. v. West Allis School District*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District*, Decision and Order No. 143 (July 2, 1986).

Because the notice of expulsion and the finding of fact and conclusions of law are not based upon at least one common statutory ground, the expulsion must be reversed. See *Melissa R. v. Westfield School District Board of Education*, Decision and Order No. 479 (September 10, 2002); *Sabrina T. v Menominee Indian School District Board of Education*, Decision and Order No. 468 (May 29, 2002); and *Travis M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000).

Finally, the record does not reflect whether the panel's expulsion order was mailed to the pupil and her parent as required by §119.25(2)(b) or whether the school board adopted the expulsion order as required by §119.25((2)(b).

This decision should not be interpreted to condone the pupil's behavior. Furthermore, the district is not precluded from beginning the expulsion process again. The district and board

must, however, abide by the statutory requirements in §119.25 and applicable portions of §120.13(1)(c). This order reversing the expulsion will remain in effect unless and until the board or administration re-engage the expulsion process.

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 O H by the Milwaukee Public School District Board of Education is reversed.

Dated this 8th day of May, 2006.



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