

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J. A. G.</p> <p>by Oshkosh Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06 EX-07</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 Oshkosh Area School District Board of Education to expel the above-named pupil from the Oshkosh Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 25, 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 March 9, 2006, from the district administrator of the Oshkosh Area School District. The letter advised a hearing

would be held on March 15, 2006 that could result in the pupil's expulsion from the Oshkosh Area School District through the 2006-2007 school year. 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 February 21, 2006 the pupil possessed a knife at school, that on February 14, 2006 he was involved in a gang initiation "beat-in" on school property and that during the 2005-06 school year, he engaged in other gang activity and recruitment while at school.

The hearing was originally scheduled for March 15, 2006 but for some reason not included in the record of the expulsion proceedings, it was rescheduled on March 15, 2006 to March 17, 2006. On March 16, 2006, apparently at the request of the parent, the hearing was rescheduled to March 20, 2006. The hearing was held in closed session on March 20, 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 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 March 29, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2006-07 school year with an opportunity for early readmission at the beginning of the second

semester of the 2006-07 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 in this alleges that there was insufficient notice of the hearing because of rescheduling. Section 120.13(1)(c)4. requires that not less than five days written notice of the

hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The record is clear that the original notice was sent more than five days before the March 15, hearing date. The record does not explain why the hearing was rescheduled on March 15. The record does indicate that when the parent received notice of the March 17 date, she requested a different date because she was unable to attend on March 17. Upon her request it was scheduled for March 20. Neither the mother nor pupil objected to the change to March 20. Based on a review of the record, it appears that the parent and pupil consented to the rescheduled date of March 20, 2006. It also appears that the district accommodated the parent by rescheduling. Given these circumstances, I conclude that the board complied with the statutory notice requirements.

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.

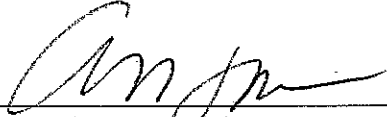
### CONCLUSIONS OF LAW

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 J. G. by the Oshkosh Area School District Board of Education is affirmed.

Dated this 22nd day of June, 2006.

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