

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

K. E.

by Milwaukee Public School District  
Board of Education

DECISION AND ORDER

Appeal No.: 06 EX-08

**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 April 28, 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 20, 2006, from the student service coordinator of the Milwaukee Public School District. The letter

advised a hearing would be held on April 10, 2006 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parents by messenger service. 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 February 22, 2006 he possessed 12 bags of marijuana, with the intent to distribute, while at school.

The hearing was held in closed session on April 10, 2006 before an independent hearing panel. Neither the pupil nor his parent appeared at the hearing. 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 panel deliberated and 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 panel 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 panel, dated April 10, 2006, was sent separately to the pupil and his parent. The order stated the pupil was expelled through April 10, 2007. On April 25, 2006, the school board reviewed the panel's decision and adopted. Notice of this action was sent to the pupil and his parent on May 3, 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.

The appeal letter was filed by the pupil. He did not raise any specific issues on appeal. Nevertheless, upon a review of the entire record, 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 K. E. by the Milwaukee Public School District Board of Education is affirmed.

Dated this 27<sup>th</sup> day of June, 2006.

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