

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>B. S</p> <p>by New London School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06-EX-11</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 New London School District Board of Education to expel the above-named pupil from the New London School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 2, 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 April 24, 2006, from the district administrator of the New London School District. The letter advised a hearing

would be held on May 3, 2006 that could result in the pupil's expulsion from the New London School District through the pupil's 18th birthday. The letter was sent separately to the pupil and her 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 she possessed and sold a controlled substance at school.¹

The hearing was held in closed session on May 3, 2006. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, 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 May 22, 2006, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the pupil's 18th birthday with an opportunity for early readmission after January 1, 2007. Minutes of the school board expulsion hearing are part of the record.

¹ Attachments to the notice of expulsion hearing make it clear that the pupil and her parents were advised that this conduct occurred on April 6, 2006 and at other times during the school year and that the pupil admitted to engaging in this conduct at a pre-expulsion meeting held before the notice of expulsion hearing was sent. While this is not an ideal notice of expulsion hearing, it is clear from the record that the pupil was given adequate notice of the date, place and nature of the alleged misconduct.

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 pupil's mother filed the appeal and raises three issues. First, she alleges that she did not receive adequate notice of the suspension decision and an adequate opportunity to have a conference with the school regarding the suspension. The State Superintendent does not have

jurisdiction over suspension procedures. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.L.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

The second issue raised by the mother concerns the timeliness of the board's expulsion decision. The board held the expulsion hearing on May 3, 2006. By that time, the pupil had been suspended a total of 15 days. The law limits suspensions to 15 days when the board indicates that it is considering expulsion. The board verbally ordered expulsion at the expulsion hearing. According to the school, the order was held in abeyance pending a special education evaluation. When the evaluation was completed and the pupil was found to not have special education needs, the order was signed by the board and mailed to the pupil. The pupil received the May 22 order on May 25. While Wis. Stats. §120.13(1)(c)3. requires that upon expulsion, the board shall mail a copy of the order to the pupil and her parents, it does not contain a time limit within which it must be sent. Because of the delay in the order, the pupil alleges that she was suspended for an extra 16 days. The procedure used by the board in this case is not a reason to overturn the expulsion. The pupil and parents were advised of the board's decision to expel and to hold the order in abeyance pending the special education evaluation. In the meantime, the pupil could have forced the issue by attending school at the conclusion of the suspension, while the expulsion was held in abeyance.

Finally, the mother alleges the order of expulsion was defective because it did not include a notice of appeal rights. Wis. Stats. §120.13(1)(c)4. requires that the notice of expulsion hearing contain a notice of the appeal rights if an expulsion is ordered. The notice of expulsion hearing did contain that information. While it is advisable to include a notice of appeal rights in the expulsion order, the statute does not require that. Furthermore, the pupil was not prejudiced

by the board's actions as she appealed her expulsion within a few days of the receiving the board's order.

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.

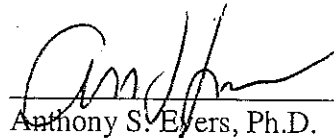
CONCLUSIONS OF LAW

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 B S by the New London School District Board of Education is affirmed.

Dated this 27th day of July, 2006.



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

