

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

J. J. I. [REDACTED]

by Waterford Union School District  
Board of Education

DECISION AND ORDER

Appeal No.: 06-EX-13

**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 Waterford Union School District Board of Education to expel the above-named pupil from the Waterford Union School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 26, 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 May 1, 2006, from the district administrator of the Waterford Union School District. The letter advised a

hearing would be held on May 11, 2006 that could result in the pupil's expulsion from the Waterford Union School District through the pupil's 21st birthday. 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 on April 12, 2006, the pupil was involved in the distribution of a prescription drug at school.

The hearing was held in closed session on May 11, 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 the misconduct alleged and ordered expulsion. A letter relaying the board's decision was order for expulsion, dated May 15, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2006-07 school year. Minutes of the school board 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 case alleges that the board did not take into account the pupil's alleged mental health issues. In a subsequent filing, the parents allege that they were unaware that they could review the pupil's records prior to the hearing.

It is clear from the record that the parents and pupil were given ample opportunity to provide the board with any and all facts it wanted the board to consider, including information concerning the pupil's mental health. 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.

It is also clear from the notice of expulsion hearing that the parents were advised that the pupil's record were available for review prior to the hearing. Therefore, the parents' arguments are without merit.

However, in reviewing the record, I find the board did err in the substance and form of its final decision. The board is required to make a finding of whether they are satisfied that the interests of the school demands expulsion. Wis. Stats. §120.13(1)(c)1. See also *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994). There is no indication in the record that such a finding was made. Further, upon ordering expulsion, the school district clerk shall mail a copy of the order to the pupil and his parents. §120.13(1)(c)3. In this case, the district administrator sent a letter to the pupil and parents reiterating the board's decision. However, in addition to not containing a finding that the interests of the school demand expulsion, this document does not indicate which statutory ground for expulsion was found by the board<sup>1</sup>. The better practice is to create a written order of expulsion that contains the facts that were found, the conclusions drawn from those facts and the specifics of the order of expulsion.

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<sup>1</sup> It is clear that the board found that the misconduct occurred, but there is no reference to the ground for expulsion.

This error can be corrected without rehearing the expulsion. With proper notice to the pupil and his parents, the board may reconvene to determine whether, based on the evidence presented at the original expulsion hearing, they are satisfied that the interests demand expulsion. If the board determines that it does, a new expulsion order may be entered.

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.

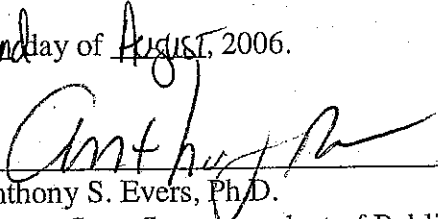
### CONCLUSIONS OF LAW

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 ~~J. S. Evers~~ by the Waterford Union School District Board of Education is reversed.

Dated this 22nd day of August, 2006.

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