

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>K. K</p> <p>by Oconomowoc Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 06 EX17</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 Oconomowoc Area School District Board of Education to expel the above-named pupil from the Oconomowoc Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 30, 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 October 24, 2006, from the district administrator of the Oconomowoc Area School District. The letter

advised a hearing would be held on November 6, 2006 that could result in the pupil's expulsion from the Oconomowoc Area School District. 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 October 19, 2006 the pupil assaulted and battered another student on school grounds.

The hearing was held in closed session on November 6, 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 November 27, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday. 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 in this case alleges that there was information not provided to the board during the expulsion hearing. The parent alleges that there were letters of recommendation from the pupil's teachers, coaches, friends, etc. that were given to the district but not the board. There is no evidence in the record that the parent or pupil were denied any opportunity to present evidence at the expulsion hearing. In fact, the parents presented several witnesses to testify to the pupil's character and the victim's character. There is no evidence that the parents raised this issue of missing documents at the expulsion hearing. Matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board*

of Education, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). Based upon the record, the pupil was afforded every opportunity to present his case, therefore there is no basis to overturn or modify 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.

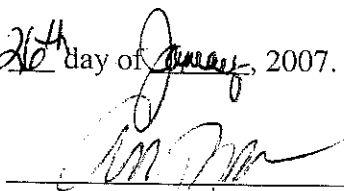
CONCLUSIONS OF LAW

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 K . K: by the Oconomowoc Area School District Board of Education is affirmed.

Dated this 20th day of January, 2007.



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