

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

D: N

by Germantown School District  
Board of Education

DECISION AND ORDER

Appeal No.: 06-EX 19

**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 Germantown School District Board of Education to expel the above-named pupil from the Germantown School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 11, 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 September 15, 2006, from the district administrator of the Germantown School District. The letter advised a

hearing would be held on September 25, 2006 that could result in the pupil's expulsion from the Germantown School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by personal 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 September 7, 2006 the pupil brought a replica of a .40 caliber Smith and Wesson handgun to school.

The hearing was held in closed session on September 25, 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 October 9, 2006, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through July 12, 2011 with an opportunity for early readmission beginning on January 19, 2007. 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 raises three issues. The pupil alleges that there was insufficient evidence to conclude the pupil's conduct endangered the safety of others. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996); *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O. W. v. Kenosha Unified School*

*District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Leo P. v. Whitewater Unified School District*, Decision and Order No. 351 (March 31, 1998); *Daniel A. v. Mauston School District Board of Education*, Decision and Order No. 324 (May 8, 1997); *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

The board heard testimony from the administration and the police officer that is assigned to the school. The administration testified about the pupil's actions that suggest he may have threatened others with the gun and that he pointed it at others at school. The police officer testified about the dangers of a look-a-like weapon. Specifically, the police officer testified about what could have happened if the look-a-like gun had been discovered at school (the violation was reported at 7:00 pm) or if the officer had seen the pupil with the look-a-like gun. The officer testified that the presence and display of this look-a-like weapon placed others in danger. Thus, a reasonable view of the evidence sustains the board's findings.

The pupil also alleges he was discriminated against because of his race. First, I note that he does not provide any support for this allegation, other than to allege his own race. Secondly, if the pupil believes he was discriminated against, he must follow the district's non-discrimination policy and procedure. If he does so, and receives a negative determination from the district, he may file an appeal under Wis. Stats. 118.13.

Finally, the pupil alleges that he is a child with a disability and the board acted prematurely by expelling him. Procedurally, the child was not identified as having a disability prior to the expulsion hearing. The mother referred him for evaluation at the hearing. Upon

receipt of the referral, the district agreed to conduct an evaluation. Based on information provided by the district, it appears an expedited evaluation was done. The child was identified as a child with a disability and it was determined that his misconduct was not a manifestation of his disability. It also appears that the district developed and implemented an IEP.

The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c).<sup>1</sup> *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://dpi.wi.gov/sped/tm-spededtopics.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

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<sup>1</sup> If the pupil does not agree with whatever decision is made regarding whether he is disabled under § 504, he must use the administrative remedies available through the United States Department of Education, Office of Civil Rights. In order to challenge a finding by the manifestation determination team, the pupil must avail himself of the due process appeal procedures provided under subchapter V of Chapter 115, Wisconsin Statutes, and PI Chapter 11, Wisconsin Administrative Code. See *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996); and *John Michael N. v. Random Lake School District Board of Education*, Decision and Order No. 331 (August 5, 1997). Information regarding these two procedures can be obtained from the school district.

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.

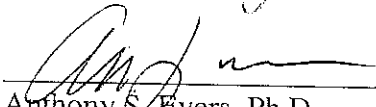
### CONCLUSIONS OF LAW

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 D. . . . . by the Germantown School District Board of Education is affirmed.

Dated this 14<sup>th</sup> day of February 2007.

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