

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>CI</p> <p>by West Bend School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 05</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 West Bend School District Board of Education to expel the above-named pupil from the West Bend School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 14, 2007.

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 January 17, 2007, from the district administrator of the West Bend School District. The letter advised a hearing would be held on January 23, 2007 that could result in the pupil's expulsion from the West Bend School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and 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 while at school on January 8, 2007 the pupil was found in possession of marijuana and admitted to selling marijuana to another student.

The hearing was held in closed session on January 23, 2007. 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 repeatedly refuse or neglect to follow school rules and 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 order for expulsion containing the findings of fact and conclusions of law of the school board, dated January 23, 2007, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday, with an opportunity for early readmission at the beginning of the 2007-08 school year. Minutes

of the school board expulsion hearing and an audiotape of the 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 alleges that the pupil was treated unfairly. The parents allege that the pupil was treated too harshly because they did not have access to police reports prior to the hearing, the principal was using the pupil as a scapegoat, other students were given less punishment, and the real culprit is the person who sold the drugs to the expelled pupil. None of these arguments require reversal of the expulsion order. The pupil and his parents did have access, according to the notice of expulsion hearing, to the records in his file at school. Whether someone else should be held accountable, such as the person who sold the student the drugs or the student to whom this pupil sold the drugs, is not relevant to this review. Each person and each expulsion is considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998).

Furthermore, 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.

However, in reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. Wisconsin Statute §120.13(1)(c)1. requires the board to determine, at the expulsion hearing, whether the interests of the school demand the student's expulsion. The Order of Expulsion does not contain such a determination, statement or finding.¹ This failure requires reversal of the expulsion order. See *J.P. v. Cornell School District Board of Education*, Decision and Order No. 328 (June 26, 1997); *A.S. v. East Troy School District Board of Education*, Decision and Order No. 300 (August 9, 1996); *N.K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994). I, therefore, reverse this expulsion. If the board composition is the same as it was at the time of the decision, the board may cure the error by reconvening and determining whether the interests of the school demand expulsion. If that determination is made the board may continue with the expulsion by creating a complete expulsion order and sending it to the pupil and parent.

This decision does not condone the pupil's conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

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).

¹ The expulsion order also incorrectly advises the pupil and parent that any appeal to the State Superintendent must be filed within 60 days. Wisconsin statutes do not contain this limitation.

ORDER

IT IS THEREFORE ORDERED that the expulsion of C. G. by the
West Bend School District Board of Education is reversed.

Dated this 11th day of May, 2007.



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