

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>G        H</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER.</p> <p>Appeal No.: 07 EX 07</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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 28, 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 March 14, 2007, from the assistant principal of Mitchell Middle School in the Racine Unified School

District. The letter advised a hearing would be held on March 23, 2007 that could result in the pupil's expulsion from the Racine Unified School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents by 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; that she repeatedly refused or neglected to obey school rules; and, that she endangered the property, health, or safety of an employee or school board member of the district in which the pupil is enrolled. The letter specifically alleged that on March 13, 2007 at approximately 3 p.m., there was a fight on the corner in front of the school. Several staff members responded to break up the fight. The pupil hit one of the school's assistant principals in the back with a closed fist.

The hearing was held in closed session on March 23, 2007 before an independent hearing officer. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the hearing officer issued an expulsion order finding 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; that she repeatedly refused or neglected to obey school rules; and, that she endangered the property, health, or safety of an employee or school board member of the district in which the pupil is enrolled. The hearing officer 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, dated March 23, 2007, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the end

of the first semester of the 2007-08 school year with an opportunity for early readmission. An audiotape of the expulsion hearing is part of the record.

The school board met on April 2, 2007 and in executive session approved the student expulsion decision referred to:

### 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 there was insufficient evidence to support the findings. The parent alleges that her child did not hit the assistant principal. This is a factual matter, determined by the trier of fact who can give weight to the evidence and arguments, as it deems appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111 N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

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, the 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). A reasonable view of the evidence sustains the factual findings.<sup>1</sup>

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.

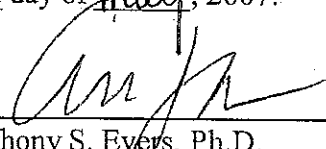
### CONCLUSIONS OF LAW

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 G. H. by the Racine Unified School District Board of Education is affirmed.

Dated this 24<sup>th</sup> day of May, 2007.

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

<sup>1</sup> As a legal conclusion, the hearing officer found 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; that she repeatedly refused or neglected to obey school rules; and, that she endangered the property, health, or safety of an employee or school board member of the district in which the pupil is enrolled. Factually, it appears that all of the misconduct occurred off school grounds, albeit very close to school. However, the pupil clearly assaulted a school employee, thus there is sufficient evidence to support the legal conclusion that she endangered the property, health, or safety of an employee or school board member of the district in which the pupil is enrolled. For a discussion of off-campus conduct and the school's authority to expel see *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Patrick Lee Y. v. Kenosha Unified School District*, Decision and Order No. 182 (October 9, 1991); and *Jason Q. v. Hartford Union High School*, Decision and Order No. 272 (February 9, 1996); and *A.S. v. West Allis School District Board of Education*, Decision and Order No. 568 (March 14, 2006).