

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Thomas J. E...</p> <p>by Poynette School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 14</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 Poynette School District Board of Education to expel the above-named pupil from the Poynette School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 22, 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 April 25, 2007, from the district administrator of the Poynette School District. The letter advised a hearing

would be held on May 2, 2007 that could result in the pupil's expulsion from the Poynette 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 in March 2007 the pupil manufactured and threw a dangerous weapon (throwing) star while in the school's agriculture shop; he repeatedly violated school rules as detailed in an attachment; and on April 13, 2007, he used a hammer to chop off a corner of the cement block in the agriculture shop, causing damage to the wall.

The hearing was held in closed session on May 2, 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 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 May 2, 2007, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday. 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 parent's appeal letter alleges that she received insufficient notice of the hearing and thus she was not permitted to have an attorney represent her or her son. The record reflects that the notice of expulsion hearing was mailed on or before April 26, 2007 and received via mail (signed certified receipt dated April 27, 2007) and by hand delivery to the parent on April 27,

2007. Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The district complied with this statutory requirement. Despite receiving the notice of expulsion hearing on April 27, 2007, the record indicates the mother did not seek to retain an attorney for this matter until April 30 and then, only by sending an e-mail to a lawyer previously hired by the family for a different purpose. When she did not hear back from that lawyer immediately, the parent did not take steps to find a different lawyer or to ask the school for an adjournment. It was only at the hearing that she requested a postponement. While the board was permitted to grant this request and it may have been advisable to postpone the hearing, the board was not obligated to do so under these circumstances.

The parent also indicates that she is unhappy with the district's determination that the pupil is not in need of special education. 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). *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->

[spcedtopics.html](#). Or, the pupil or his parents may call the special education team at the

Department of Public Instruction to get more information.

Finally, the parent alleges that because the full board was not present for the expulsion hearing, the expulsion should be overturned. As long as a quorum is present, in other a majority of the elected school board members, that is sufficient for an expulsion hearing. *A.W. v. Spooner Area School District Board of Education*, Decision and Order No. 577 (July 27, 2006) and *T. C. v. Lake Holcombe School District Board of Education*, Decision and Order 115 (October 18, 1983).

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.

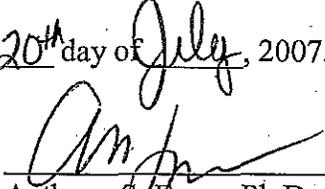
CONCLUSIONS OF LAW

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 T. J. Evers by the Poynette School District Board of Education is affirmed.

Dated this 20th day of July, 2007.



Anthony S. Evers, Ph.D.

Deputy State Superintendent of Public Instruction