

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T. J.</p> <p>by Wittenberg-Biramwood School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 07 EX 15</p>
---	---

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 Wittenberg-Biramwood School District Board of Education to expel the above-named pupil from the Wittenberg-Biramwood School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 29, 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 May 3, 2007, from the district administrator of the Wittenberg-Birnamwood School District. The letter advised a hearing would be held on May 10, 2007 that could result in the pupil's expulsion from the Wittenberg-Birnamwood School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her 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 April 28, 2007 while the pupil attended the prom held at the high school she was under the influence of alcohol.

The hearing was held in closed session on May 10, 2007. The pupil and her parents appeared at the hearing represented by an attorney. 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 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 10, 2007, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the 2007-08 school year. Minutes of the school board 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 in this case alleges that there was insufficient evidence to support the finding that the pupil endangered the property, health, or safety of others at school.

Expulsions concerning alcohol consumption at school or at school sponsored events have previously been upheld as conduct that endangers the health, safety or welfare of others at

school. *Jessica G. v. Chippewa Falls Area Unified School District Board of Education*, Decision & Order No. 409 (March 15, 2000); *Troy Y. v. Burlington Area School District Board of Education*, Decision & Order No. 309 (Jan. 21, 1997); *Daniel A. v. Mauston School District Board of Education*, Decision & Order No. 324 (May 8, 1997); *Thomas P. v. Necedah Area School District Board of Education*, Decision & Order No. 289 (May 23, 1996). In addition, the state superintendent has upheld expulsions based on being on school grounds under the influence of alcohol when there was evidence of being under the influence such as slurred speech, erratic behavior, or sickness while at school along with evidence of consumption of alcohol. *D. S. v. Cedar Grove-Belgium Area School District Board of Education*, Decision and Order No. 552 (July 11, 2005); *E.D. v. Burlington School District Board of Education*, Decision and Order no. 484 (Feb 18, 2003); *A. T. v. Waupaca School District Board of Education*, Decision and Order no. 454 (February 8, 2002)

In this case, there is no allegation that the pupil consumed or possessed alcohol while at school or under the supervision of school authorities. The notice of expulsion hearing cited the pupil for being under the influence of alcohol at the school prom. However, the only evidence to support this allegation is ambiguous testimony about a preliminary breath test administered to the pupil and an admission by the pupil that she consumed alcohol at some unspecified time prior to arriving at the prom.

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). However, in this case, a reasonable view of the evidence does not sustain the board's finding that the pupil was at school under the influence of alcohol.

According to the record submitted by the board, the pupil was at the school's prom while an undercover officer supervised the school grounds. Sometime before 11:20 pm, as part of his duties, he walked through the parking lot and noticed a pick-up truck with three empty beer cans in the cab, two cans sitting in the drink holders of the cab and three empty beer cans in the pick-up bed. He ran the license plate to get the name of the registered owner of the vehicle. He then asked the school administration if there was anyone at the prom with that name. The truck was registered to the father of the pupil's date. The pupil's date was removed from the prom to be questioned by the officer. The date informed the officer that he had drunk one beer, with his father prior to picking up the pupil to go for dinner before the prom. He indicated the empty cans were his father's. The date provided a breath sample to the police officer through a preliminary breath test (PBT) and it registered 0.0. The date was escorted by the officer back into the prom to get the pupil for questioning.

The pupil cooperated with the officer and told him that she and her date had a couple of beers as they were driving to the prom. At approximately 11:20 pm, she provided a breath sample through a PBT, and according to the officer's report it was negative.

There is no further information in the record regarding whether the pupil was under the influence of alcohol on school property. There is nothing in the record to indicate what time she arrived at the prom. Nor is there any indication that she had slurred speech, was acting unusual, smelled of alcohol or exhibited any other behaviors which would indicate that she was under the influence of alcohol. The sole evidence relied upon by the board appears to be her statement that

she drank a couple of beers sometime prior to coming to the prom. The PBT administered by the police does not provide evidence of being under the influence as it was either "negative", .001, or .0001¹ as there was no testimony or evidence to indicate what these result mean with regard to the finding that she was under the influence of alcohol.

Without evidence that she was under the influence of alcohol at school, there is no evidence to support the finding that she engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others. The state superintendent does not condone the pupil's conduct and decision to violate the law by drinking alcohol. However, the facts presented in the record do not support a statutory basis for the expulsion.

In reviewing the record in this case, I find the school district did not comply with all of the procedural requisites. I, therefore, reverse this expulsion.

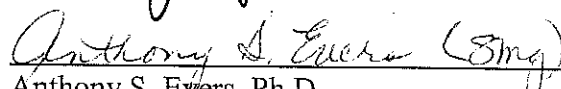
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T. J. by the Wittenberg-Birnamwood School District Board of Education is reversed.

Dated this 30th day of July, 2007.



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

¹ The officer's report indicates it was negative. The principal's written report claims the officer told him it was .001. The written minutes of the expulsion hearing indicate the officer testified it was .0001.