

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J S</p> <p>by South Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-06</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 South Milwaukee School District Board of Education to expel the above-named pupil from the South Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 12, 2008.

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 14, 2008, from the principal of the South Milwaukee High School. The letter advised a hearing

would be held on January 29, 2008, that could result in the pupil's expulsion from the South Milwaukee School District through the pupil's 21st birthday. The letter was sent to the pupil by regular mail and certified mail.<sup>1</sup> 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 January 8, 2008 the pupil possessed and intended to sell marijuana while on school grounds.

The hearing was held in closed session on January 29, 2008. The pupil appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil was 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 February 4, 2008, was mailed to the pupil. The order stated that the pupil was expelled until his 21st birthday. A transcript of the expulsion 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

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<sup>1</sup>The letter was mailed only to the pupil and not his parents because the pupil turned 18 years old on June 14, 2007.

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 one issue which requires consideration. The pupil claims that the expulsion should be overturned because his parents were not provided with adequate notice of the expulsion hearing. Wisconsin stat. § 120.13(1)(c)4. states that "[n]ot less than 5 days' written notice of the hearing under subd. 3. shall be sent to the pupil and, **if the pupil is a minor**, to the pupil's parent or guardian. . ." (Emphasis added.) Since the pupil reached the age of 18 on June 14, 2007 he was not a minor. Therefore, the district was not required to notify the pupil's parents of the expulsion hearing.

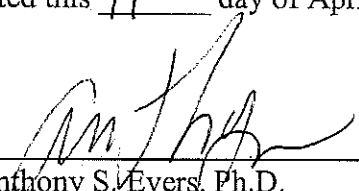
**CONCLUSIONS OF LAW**

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 J S by the South Milwaukee School District Board of Education is affirmed.

Dated this 11<sup>th</sup> day of April, 2008.

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