

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>B B</p> <p>by Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-11</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 Milwaukee School District Board of Education to expel the above-named pupil from the Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 10, 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 31, 2008, from the student service coordinator of the Milwaukee School District. The letter advised

a hearing would be held on February 7, 2008 that could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and his parents by personal service. 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 10, 2008, the pupil assaulted and battered another student at Hamilton High School.

The hearing was held in closed session before an independent hearing panel on February 7, 2008. The pupil and his parents did not appear at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the panel deliberated in closed session and 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 panel 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 independent hearing panel, dated February 7, 2008, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through April 9, 2009, and that no MPS educational services be provided during the expulsion period. On February 29, 2008, the MPS Board of School Directors reviewed the independent hearing panel's order and approved it. The pupil and his parents were advised by letter dated March 17, 2008 of the MPS Board of School Directors' Decision. A transcript of the expulsion hearing and documents submitted as evidence 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) and 119.25, 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) and 119.25. 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 three issues which require consideration. First, the pupil complains that he did not have an opportunity to address the board to explain his actions because he arrived at the hearing on the wrong date. The record reflects that both the pupil and his parents were provided with adequate notice of the expulsion hearing. Given adequate notice, failure to appear on the correct date of the expulsion hearing does not require another expulsion hearing or opportunity to provide an explanation for your actions.

Second, the pupil claims that expulsion is not the appropriate consequence for his actions. 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 record indicates the pupil along with several other students severely beat two other students in the hallway. One victim was taken to the hospital. The hearing panel 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 hearing panel's determination. In reviewing this case, I do not see an extraordinary circumstance or a procedural violation that cause me to modify the pupil's expulsion period.

Third, the pupil alleges that other students involved in the fight have been allowed back into school. However, because expulsions are 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).


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 _____ by the Milwaukee School District Board of Education is affirmed.

Dated this th 6 day of May, 2008.



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