

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A O</p> <p>by Janesville School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-13</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 Janesville School District Board of Education to expel the above-named pupil from the Janesville School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 19, 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 October 12, 2007, from the district administrator of the Janesville School District. The letter advised that a

hearing would be held on October 24, 2007 that could result in the pupil's expulsion from the Janesville School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parent by certified mail. The letter alleged that the pupil engaged in conduct which endangered the property, health, or safety of others at school. The letter specifically alleged that on October 6, 2007, the pupil participated in a burglary to Lincoln Elementary School, damaged the school's property and stole school equipment from the school.

The hearing was held in closed session before an independent hearing officer on October 24, 2007. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing officer found that the pupil did engage in conduct at school which endangered the property, health, or safety of others. 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 of the hearing officer, dated October 24, 2007, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through beginning of the 2009-2010 school year. On November 13, 2007, the Janesville School District board of Education reviewed the hearing officer's order and approved it. The pupil and his parent were advised by letter dated November 15, 2007 of the board's decision. Minutes of the expulsion hearing are part of the record.<sup>1</sup>

---

<sup>1</sup> Wisconsin Stats. § 120.13(1)(e) requires that a transcript of an expulsion hearing be made if a school board uses an independent hearing officer to conduct an expulsion hearing. In this case, the district submitted minutes, rather than a transcript, to reflect the proceedings of the hearing. The appellant did not raise this issue in the appeal. The minutes appear to be quite detailed, and there is no dispute as to what evidence was presented; therefore, reversal is not required at this time.

## 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 raises one issue which requires consideration. The pupil argues that since his act was not committed within school hours, the expulsion should be reversed. In this case, the pupil broke into an elementary school, vandalized the school's property and stole equipment from the school. Thus, his conduct occurred at school.

Furthermore, his conduct endangered the property, health and safety of others. The term “endanger” means to bring into danger or peril. The concept of “danger” involves harm, damages, the chance of loss or injury, or the capability of producing death or great bodily harm. These terms embrace the notion of harmful acts or actions that are detrimental or involve loss or damages. *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 304 (Nov. 25, 1996); *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (Dec. 5, 1995); and *Kirsten J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992). Thus, the finding by the board that the pupil endangered the property, health, or safety of students and staff at Lincoln Elementary School is upheld.


#### 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 comply with all of the procedural requirements of §120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of A      ○      by the Janesville School District Board of Education is affirmed.

Dated this 15<sup>th</sup> day of May, 2008.



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