

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A . T</p> <p>by Waupun School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-17</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 Waupun School District Board of Education to expel the above-named pupil from the Waupun School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 14, 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 March 5, 2008, from the district administrator of the Waupun School District. The letter advised a hearing

would be held on March 18, 2008 that could result in the pupil's expulsion from the Waupun School District. 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 stated that "while working at an offsite location, that was an extension of the classroom, [the pupil was] in the possession of a utility blade in which [he] made a threatening motion to another student as well as making a verbal threat to harm the same student in the future. In addition, [the pupil was] in possession of this utility knife the entire day at school on Friday, February 22, 2008, which is considered a concealed weapon."

The hearing was held in closed session on March 18, 2008. 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 that on February 29, 2008 the pupil took a utility knife, while at a school district work site, and held it to the throat of another student, threatening to kill the other student. The board also found that in January 2008 the pupil made a verbal threat to bring a gun to school and kill two other district students. The board also found that the pupil was given notice, via the notice of expulsion hearing dated March 5, 2008, that the February 29, 2008 conduct would be considered at the expulsion hearing. The board then 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 was dated April 1, 2008. The order stated the pupil was expelled through the pupil's 21st birthday due to the conduct that occurred at the school district construction site on February 27, 2008. A transcript of the hearing and exhibits introduced at the 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 letter in this case raises one issue which requires consideration. The pupil alleges that the school administration did not take adequate steps to prevent harassment. However, this complaint is beyond the authority of an appeal of the expulsion decision. Complaints concerning pupil harassment should be addressed within the local school district.<sup>1</sup>

In a subsequent filing by the pupil's parent, the parent notes that the dates of alleged offenses and the dates referenced in the school board's brief are inconsistent. It is not surprising that the dates in the district's brief are inconsistent as the entire record is confusing. The notice provided to the pupil mentioned a misconduct involving the knife that occurred on February 22, 2008. The hearing testimony of the assistant principal specifically referenced misconduct involving the knife reported on Friday, February 29 that occurred on Wednesday, February 27. The testimony of the pupil and parent addressed the possession of knife that allegedly occurred on February 22. When questioned by the district's legal counsel, the pupil testified about an alleged threat that occurred in January -- even though this was not contained in the notice of hearing. The exhibits that were submitted during the hearing contain references to misconduct on February 22, 27, 29 and January, 2008.

It is well established that a student is entitled to due process at an expulsion hearing. *Goss v. Lopez*, 419 U.S. 565 (1975); *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W. 2d 334 (1982). It is also well established that notice is an integral part of procedural due process in these situations. A student facing expulsion is entitled to timely and adequate

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<sup>1</sup>The pupil filed a harassment complaint with the school district, alleging in part that at least one pupil, under the supervision of a staff member harassed him by calling him "retard" and "gay". The board issued a written decision on this complaint on May 6, 2008, however that decision did not advise the pupil of his right to appeal the

notice of the charges against him or her so as to allow a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). Furthermore, § 120.13(1)(c)4. clearly requires notice of the specific grounds for expulsion and the particulars of the alleged misconduct. Proper notice must inform the pupil of the time frame during which the misconduct occurred, where the misconduct occurred, and a description of the conduct to be considered. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *Ryan S. v. Pewaukee School District Board of Education*, Decision and Order No. 445 (September 25, 2001); *Ryan K. v. Pewaukee School District Board of Education*, Decision and Order No. 439 (July 24, 2001). Expulsions have been repeatedly overturned for failure to include this in the notice. *Bradley Scott P. v. Menasha Joint School District Board of Education*, Decision and Order No. 197, (August 21, 1992); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986).

After reviewing the record in this case, it is not clear what date the misconduct occurred. But it is clear that the particulars of misconduct as listed on the notice of hearing dated March 5, 2008, identifies the date of the offense as Friday, February 22, 2008. It is also clear from the board's order that the board found that conduct occurred on February 29 and January 2008 but that it ordered his expulsion for conduct that occurred on February 27. Clearly, the notice did not clearly identify the misconduct that the board considered and determined. This error requires reversal. *Ulysses R. v. South Milwaukee School District Board of Education*, Decision and Order No. 509 (April 17, 2004); *B.Z. v. Marinette School District Board of Education*, Decision and

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determination pursuant to Wis. Admn. Code §PI 9.04 (3). The pupil could appeal that decision to the state superintendent under PI 9.08.

Order no.507 (March 1 ,2004) *J.B. v. Central/Westosha High School District Board of Education*, Decision and Order No. 494 (May 8,2003); *Randy H. v. Central/Westosha School District Board of Education*, Decision and Order No. 204 (April 6, 1993).

In addition to this error, there is no evidence in the record that the expulsion order was sent separately to the pupil and parent. This is also a statutory requirement.

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. This decision does not condone the pupil's conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

If the district chooses, it may remedy these errors by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415 (May 21, 2000); *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and, *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of A T by the Waupun School District Board of Education is reversed.

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

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