

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J M</p> <p>by Kenosha School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-19</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 Kenosha School District Board of Education to expel the above-named pupil from the Kenosha School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 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 April 3, 2008, from the Minority Academic Affairs Specialist of the Kenosha School District. The letter

advised a hearing would be held on April 8, 2008 that could result in the pupil's expulsion from the Kenosha School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parents by first-class 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 March 13, 2008, while at school, the pupil threatened another student by saying "I'm going to beat your ass." At this point, the pupil's mother provided the pupil with a metal baseball bat which she obtained from her trunk and handed it to the pupil. The pupil then began swinging the bat and threatening to hurt the student. The bat was taken from the pupil by a staff member. The hearing was held before an independent hearing officer in closed session on April 8, 2008. The pupil and her mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother 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 on March 13, 2008, while at school, the pupil threatened another student by saying "I'm going to beat your ass." At this point, the pupil's mother provided the pupil with a metal baseball bat which she obtained from her trunk and handed it to the pupil. The pupil then began swinging the bat and threatening to hurt the student. The bat was taken from the pupil by a staff member. He concluded that 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 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 April 8, 2008, was

mailed separately to the pupil and her parent. The order stated that the pupil was expelled through the 2008-2009 school year. The school board reviewed the independent hearing officer's order on April 28, 2008, and approved it. Copies of the hearing officer's decision and the board's order were sent separately to the pupil and her parents. Minutes of the expulsion hearing, an audiotape of the expulsion 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 two issues. First the pupil alleges that the school district violated due process procedure because she was out of school due to suspension longer than 15 days. The state superintendent lacks the authority to review the length of a pupil's suspension. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). Secondly, the pupil claims that the testimony given by the principal at the hearing was inaccurate. The pupil does not explain what was inaccurate about her testimony. Therefore, this allegation cannot be considered in the appeal.

However, after reviewing the record, I find that the school district did not comply with all procedural requirements because there is no evidence in the record to support the factual finding that the pupil's conduct occurred at school as alleged. In this case, the Notice of Expulsion Hearing dated April 3, 2008, alleges that on March 13, 2008, the pupil, "**while at school,**" threatened another student verbally and with a bat. The district alleges that this conduct supports a finding that the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others.

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 factual determination that the pupil engaged

in the conduct at school, as alleged in the notice of expulsion hearing. Upon a thorough review of the record, including reviewing the police statements used as exhibits and listening to the tape of the hearing, **there is no evidence in the record that the alleged conduct occurred at school as alleged in the particulars of the expulsion hearing notice.** The principal testified that on March 13, 2008, after school, she was outside supervising students and went back into the school building around 4 p.m. The principal testified that shortly after she arrived back in the building, two girls ran into the building yelling “there’s a fight” and that she and another teacher went outside **and across the street to break up the fight.** Further, the principal testified that **the incident occurred in the street across from the main entrance in front of the school.**

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 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. 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).


The notice contained particulars that were sufficiently detailed to advise the pupil of the alleged misconduct, however, there is no evidence in the record to support either the allegations or the ultimate factual determination made by the hearing examiner.

This decision does not condone the pupil's conduct. However, I must uphold the requirements contained in the statutes. In reviewing the record in this case, I find the school district did not comply with all of the procedural requirements. I, therefore, reverse this expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of J. H. M. by the Kenosha School District Board of Education is reversed.

Dated this 18th day of July, 2008.



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