

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J H</p> <p>by Nekoosa School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-21</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 Nekoosa School District Board of Education to expel the above-named pupil from the Nekoosa School District. This appeal was filed by the pupil and received by the Department of Public Instruction on June 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 April 11, 2008, from the Nekoosa High School assistant principal. The letter advised a hearing would be held on

April 16, 2008, that could result in the pupil's expulsion from the Nekoosa School District through the pupil's 21st birthday. 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.¹ The letter specifically alleged that on April 8, 2008, shortly before the start of the school day, the pupil was found in the dugout of the high school softball field smoking a cigarette and in possession of two prescription medications neither of which were prescribed to the pupil.²

The hearing was held in closed session on April 16, 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 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 April 16, 2008, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through June 30,

¹ Separate notices were sent to the pupil and his parents; however, the notice sent to the parents and the pupil did not contain the same "grounds" for expulsion. For example, the notice to the pupil included repeated rule violations as a ground for expulsion but the parent's notice did not. The parent's notice included endangering the property, health or safety of any employee or school board member as a ground for expulsion but the pupil's notice did not. Because both notices contain the same ground, engaging in conduct while at school or under the supervision of school authority which endangered the property, health, or safety of others, the factual allegations were the same and the findings by the board were based on the common ground, there is no reason to overturn the board's order of expulsion. However, the district should review its procedures to avoid repeating this error.

² The notice of expulsion hearing also stated that this misconduct violated a list of state statutes, including secs. 118.125, 118.126, 118.24(2)(f), 118.257, 125.02(8m), 125.037 and 125.09(2). None of these statutes apply to the situation in this case. The references to ch. 118 involve school district requirements and the references to ch. 125

2010 with an opportunity for early reinstatement after June 30, 2009. Minutes of the school board expulsion 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.L.*, 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.

involve alcohol violations. The inclusion of these references does not require reversal in this case, however, the district should review its procedures to avoid a repeated error.

The appeal letter in this case raises three issues. First, the parent alleges it was a violation of Wis. Stats. sec. 119.25 for the assistant principal to “go” to the district administrator for the pre-expulsion review and then later for the district administrator to introduce himself at the expulsion hearing as the legal advisor to the board and later to accompany the board in deliberations. The record does not indicate whether the assistant principal spoke with the district administrator regarding the expulsion prior to the hearing. It also does not indicate whether the district administrator was with the board during deliberations. Regardless, the statute cited by the parents only applies to expulsion hearing conducted by the Milwaukee School district, it does not apply to this school district. In this case, the assistant principal represented the administration at the hearing while the district administrator assisted the school board. Therefore, based upon the record, there is no basis to conclude that there was any inappropriate contact between the school administrators, the district administrator, and the board.

Secondly, the parent alleges that it was an error not to include the appeal rights in the expulsion order. Wis. Stat. §120.13(1)(c)4. requires the notice of expulsion hearing to advise the pupil and his parent of the appeal rights. There is no statutory requirement that it be included in the expulsion order. The notice of expulsion hearing contained the required notice of appeal rights.

Finally, the parent alleges that because the board’s tape recording of the expulsion hearing was flawed and unavailable, there was a procedural error. Wis. Stat. §120.13(1)(c)3. requires the board to take written minutes of the expulsion hearing. The board complied with this requirement. There is no requirement to make or maintain a recording of the hearing under these circumstances, therefore there is no violation.

In reviewing the record in this case, I find the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

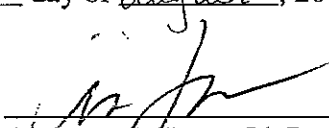
CONCLUSIONS OF LAW

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 H by the Nekoosa School District Board of Education is affirmed.

Dated this 11th day of August, 2008.



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