

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

R C

by Kenosha School District  
Board of Education

DECISION AND ORDER

Appeal No.: 08-EX-24

**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 August 6, 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.

The pupil's expulsion appeal relates to two separate orders for expulsion. Pertaining to the first order for expulsion, the record contains a letter entitled "Notice of Expulsion Hearing," dated April 30, 2008, from the chairman of administrative review committee of the Kenosha

School District. The letter advised a hearing would be held on May 7, 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 his parent by regular 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 April 18, 2008, the pupil was under the influence of marijuana and in possession of marijuana (four baggies and a joint) while at school.

The hearing was held before an independent hearing officer on May 7, 2008. 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 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 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 officer, dated May 7, 2008, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through the 2008-09 school year. The school board reviewed the independent hearing officer's order on May 13, 2008 and approved it. The pupil and his parent were advised by the Report of Review by School Board dated May 27, 2008 of the board's decision. Minutes and an audio-tape of the expulsion hearing and exhibits introduced at the hearing are part of the record.

The school district conducted another expulsion hearing for the pupil at issue due to a different act of misconduct to extend the length of the original expulsion period. Relating to the second expulsion order, the record contains a letter entitled "Notice of Expulsion Hearing," dated May 14, 2008, from the chairman of administrative review committee of the Kenosha School District. The letter advised a hearing would be held on May 22, 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 his parent by regular 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 May 2, 2008, while the pupil was suspended from school pending an upcoming expulsion hearing, he phoned in a bomb threat to the high school.

The hearing was held before an independent hearing officer on May 22, 2008. Neither the pupil nor his parent appeared at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the independent hearing officer 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 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 officer, dated May 22, 2008, was mailed separately to the pupil and his parent. The order stated the pupil was expelled through the 2010-11 school year. The school board reviewed the independent hearing officer's order on May 27, 2008 and approved it. The pupil and his parent were advised by the Report of Review by School Board dated May 29, 2008

of the board's decision. Minutes and an audio-tape of the 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.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 parent of the pupil filed an appeal of the May 22, 2008 expulsion decision. Due to the unusual procedural history of the case, both expulsion records were reviewed. In the case of

the expulsion order proposed by the hearing officer on May 7, 2008, and adopted by the board on May 13, 2008, the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

Upon review of the expulsion order proposed by the hearing officer on May 22, 2008 and adopted by the school board on May 27, 2008, I find that the district did not comply with all the procedural requisites, but that the district can correct the error.

On May 2, 2008 while he was suspended from school and awaiting an expulsion hearing, the pupil called in a bomb threat to the school. In its notice of expulsion hearing the district alleged that the misconduct occurred on school grounds or under the supervision of authority. However, at the time of the phone call, he was suspended from school and was not on school grounds or under the supervision of a school authority. There is no evidence in the record to support the findings of the expulsion order that the conduct occurred on school grounds or under the supervision of a school authority.

However, the pupil's conduct clearly meets other grounds for expulsion found in Wis. Stats. §120.13(1)(c)1.<sup>1</sup> Thus, I am required to reverse the expulsion on this procedural error but the board may pursue expulsion for this misconduct by providing proper notice, an opportunity to be heard and making proper conclusions that are based upon the facts presented.

### 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 requisites in the expulsion order adopted by the board on May 13, 2008.

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<sup>1</sup> 120.13(1)(c)1. includes knowingly conveying or causing to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives or engaging in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority.

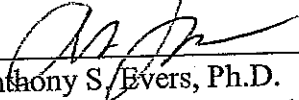
Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c) in its expulsion order decided on May 27, 2008 and dated May 29, 2008.

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of R C ordered by the Kenosha School District Board of Education on May 13, 2008 is affirmed.

IT IS THEREFORE ORDERED that the expulsion of R C ordered by the Kenosha School District Board of Education on May 27, 2008 is reversed.

Dated this 3 day of October, 2008.

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