

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of T J by Milwaukee School District Board of Education	DECISION AND ORDER Appeal No.: 08-EX-25
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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 Milwaukee School District Board of Education to expel the above-named pupil from the Milwaukee School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 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 September 24, 2008, from the student service coordinator of the Milwaukee School District. The letter advised

a hearing would be held on October 1, 2008, that could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and his parent by personal service. 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 the pupil was in the possession of drugs (marijuana-10 bags/10.8 grams) with the intent to distribute on September 16, 2008, at Custer High School.

The hearing was held in closed session before an independent hearing officer on October 1, 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 hearing officer deliberated in closed session and found 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 officer dated October 1, 2008, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled until November 3, 2009, and that no MPS educational services would be provided during the expulsion period. On October 23, 2008, the MPS Board of School Directors reviewed the independent hearing officer's order and approved it. The pupil and his parent were advised by letter dated October 27, 2008 of the MPS Board of School Directors' decision. A transcript of the expulsion hearing and documents submitted as evidence 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 or more 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 three issues which require consideration. First, the appeal letter alleges that the pupil was disciplined in more than one way for the same incident. The record indicates that the pupil was first suspended for the incident in question and then

referred for possible expulsion. This does not violate any procedural requirements. In fact, suspending a pupil pending expulsion is explicitly allowed by Wis. Stat. § 120.13(1)(b).

Next, the appeal claims that the pupil regrets his actions, understands the mistake he made and expresses that he would like to return to school. The appeal also states that the pupil is now attending counseling programs and youth mentoring programs on a weekly basis. However, since the authority to “approve, reverse or modify the decision” was conferred upon the state superintendent by 1987 Wis. Act 88, § 3, the state superintendent has consistently declined to modify the length of expulsions. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The hearing panel and school board are in the best position to judge the demeanor of witnesses as well as to know and understand what the community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see an extraordinary circumstance or a procedural violation that would cause me to modify the pupil's expulsion period.

Finally, the appeal asks that the pupil be offered alternative schooling in order to graduate. During the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of*

Education, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986)

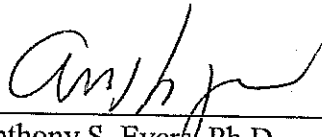
CONCLUSIONS OF LAW

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 T . J by the Milwaukee School District Board of Education is affirmed.

Dated this ^{7th} 7 day of January, 2009



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

