

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>J S</p> <p>by Stevens Point School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-26</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 Stevens Point School District Board of Education to expel the above-named pupil from the Stevens Point School District. This appeal was filed by the pupil and received by the Department of Public Instruction on November 17, 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 October 20, 2008, from the director of pupil services of the Stevens Point School District. The letter advised

a hearing would be held on October 29, 2008 that could result in the pupil's expulsion from the Stevens Point School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parent by first-class and 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 alleged that on October 13, 2008, the pupil demonstrated an unwillingness to comply with district and school rules by physically assaulting a fellow student in the north end of the counseling office hallway.

The hearing was held in closed session on October 29, 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 school board deliberated in closed session. The board 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.¹ 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 October 29, 2008, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled through June 9, 2009. Minutes of the school board expulsion hearing, a compact disc recording of the expulsion hearing and exhibits introduced at the hearing are part of the record.

¹The original Findings of Fact, Conclusions of Law and Order of the pupil expulsion erroneously stated that the "pupil did engage in conduct while not at school or while not under the supervision of a school authority." This error, explained as a typographical error, was corrected by the board on December 22, 2008. The corrected order and notice of correction is added to the record of the expulsion proceeding.

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 several issues which require consideration. The appeal complains that because all board members were not present at the time of the expulsion hearing, the pupil received an unfair hearing. As long as a quorum is present, in other words, a majority of the elected school board members, that is sufficient for an expulsion hearing. See

T. J. E. v. Poynette School District Board of Education, Decision and Order No. 601 (July 20, 2007), *A. W. v. Spooner Area School District Board of Education*, Decision and Order No. 577 (July 27, 2006) and *T. C. v. Lake Holcombe School District Board of Education*, Decision and Order No. 115 (October 18, 1983).

The pupil requests that the expulsion be overturned because the vice principal who took the pupil's statement at the time of the incident was not present at the hearing. At the hearing, other school officials who also heard the statement made by the pupil to the vice principal did testify. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

The pupil also alleges that the board ignored a reference to a petition circulated by a friend asking that the pupil not be expelled. The board determines the weight to give evidence. 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). In this case, the record indicates that on October 13, 2008, the pupil was involved in a physical fight where he repeatedly punched another student in the face causing the victim to bleed profusely in the high school hallway and require 12 stitches in the face. In an interview with school officials immediately after the fight and also during the expulsion hearing, the pupil admitted to repeatedly punching the other student in the face. Therefore, a reasonable view of the evidence sustains the board's findings.

The pupil argues that he is being punished twice for the same incident because he was first suspended before being referred for expulsion. It is common procedure for school districts to suspend students while determining whether or not expulsion is the proper remedy for a student's misconduct. This process is specifically referenced in Wis. Stat. § 120.13(1)(b). The school district did not violate a procedural requirement by suspending the pupil and referring him for expulsion.

The pupil also states that he realizes that he made the wrong decision and claims that expulsion is an excessive form of punishment for this incident and that he is not a threat. 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 school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its 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.


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 S by the Stevens Point School District Board of Education is affirmed.

Dated this 16th day of January, 2009.



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