

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A S</p> <p>by Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-05</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 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 February 11, 2009.

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 17, 2008, from the Student Service Coordinator of the Milwaukee School District. The letter

advised a hearing would be held on October 24, 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. 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 possession of and used a weapon (BB gun) at Whitman Elementary School on October 8, 2008.

The hearing was held in closed session before an independent hearing officer on October 24, 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 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. He 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 was reviewed and adopted by the board on November 21, 2008. Both the hearing officer's order and the board's decision was mailed separately to the pupil and his parent. The order stated the pupil was expelled through November 3, 2009. A transcript 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 several issues which require consideration. The appeal filed by the pupil's mother claims that she was misled by school officials. Specifically, the pupil's mother states that a school official informed her that because of her son's age he could not be expelled. In expulsion hearings, it is required that the pupil and the pupil's parent be given 5 days' notice of an expulsion hearing. In this case, the record includes a notice of expulsion hearing dated October 17, 2009, that was sent to the pupil and to the pupil's parent. At the hearing, the pupil and his parent were given the opportunity to present evidence, cross-examine witnesses and respond to allegations. The pupil's mother did not raise any issue or

dispute about statements given by school officials at the hearing. Matters not raised before the board cannot be raised for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva JI School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995). Regardless, even if a school official told the pupil's mother that her son could not be expelled because of his age, while that would be unfortunate, the pupil and his mother were still timely notified of the hearing and possibility for expulsion. I find that the school district did not violate a procedural requirement regarding this allegation.

The pupil's mother claims that the hearing officer had decided to expel the pupil before hearing both sides of the case. The law presumes that school board members, including hearing officers, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), appeal dismissed and cert. denied, 370 U.S. 720 (1962). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996); *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130 (May 10, 1985).

The appeal also claims that the punishment is extreme and alleges that the pupil is being racially singled out because his father is from India. The record includes a notice of expulsion hearing dated October 17, 2008, that claims the pupil was in possession of and used a BB gun on October 8, 2008, at Whitman Elementary School. Testimony of school officials detailing the incident was taken at the expulsion hearing. The school principal testified that she was informed that the pupil had a BB gun that went off on the school playground. The pupil was escorted into the school and interviewed. The pupil confessed that he brought the BB gun on the bus from home. He stated that it was loaded and he was shooting on the field adjacent from the playground. The principal's testimony also reveals that other witnesses were called and testified to hearing shots and seeing the pupil and another student with the BB gun.

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. In reviewing this case, I do not see an extraordinary circumstance or a procedural violation that cause me to modify the pupil's expulsion period.

The pupil's parent also claims that the school district racially discriminated against her son. However, an expulsion appeal is not the appropriate context within which to bring a pupil discrimination complaint. Procedures to file such a complaint are outlined in Wis. Stat. § 118.13 and additional information can be found at <http://dpi.wi.gov/sped/pndguidelns.html>.

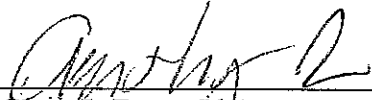
### CONCLUSIONS OF LAW

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 A S by the Milwaukee School District Board of Education is affirmed.

Dated this 8<sup>th</sup> day of April, 2009

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