

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>L B</p> <p>by Birchwood School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-07</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 Birchwood School District Board of Education to expel the above-named pupil from the Birchwood School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 19, 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 22, 2008, from the district administrator of the Birchwood School District. The letter advised a

hearing would be held on November 3, 2008 that could result in the pupil's expulsion from the Birchwood School District through his 21st birthday. The letter was sent separately to the pupil and his parents. 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 possessed and displayed a knife on both October 16 and 17, 2008.

The hearing was held in closed session on November 3, 2008. The pupil and his parents did not appear at the hearing. At the hearing, the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the school board deliberated 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 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 November 7, 2008, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through his 21st birthday. General minutes of the school board meeting, an audiotape¹ of the expulsion hearing, and exhibits introduced at the hearing are part of the record.

¹Wis. Stats. § 120.13(1)(c)3 requires the school board to keep written minutes of the hearing. The board submitted general minutes of the school board meeting, but did not submit written minutes of the pupil's expulsion hearing with the hearing record. This could be grounds for reversal. However, the board did submit an audiotape of the hearing as part of the record. In this case, the audiotape was barely of satisfactory quality to enable a meaningful review of the hearing, thus I will not overturn the expulsion. I caution school districts against relying on such audiotapes, because they are frequently so garbled or inaudible as to be useless for review purposes. See *John L. v. Greenfield School District Board of Education*, Decision and Order No. 418 (June 26, 2000); *Dustin F. v. Altoona School District Board of Education*, Decision and Order No. 432 (April 11, 2001).

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 one issue which requires consideration. The appeal alleges that the pupil's conduct was a result of his diagnosis of ADHD, severe depression and reactive attachment disorder. The notice of expulsion hearing dated October 22, 2008, claims that the pupil possessed and displayed a knife at school on both October 16, and 17, 2008. The

school principal testified at the expulsion hearing detailing his investigation. He testified to, and included in the record, notes stemming from the incident, a discipline report for the pupil and results of the pupil's IEP and manifestation meetings. The principal testified that on October 17, 2008, two students informed him that the pupil had a knife in his possession at school on October 16, and 17, 2008 and that he stated that he wasn't afraid to die. A different female student reported that during Social Studies, the pupil pulled out a Swiss Army Knife and put it to his wrist and stated "I'm not afraid to do it." She told the pupil to stop and the pupil put the knife back in his pocket. The pupil pulled out the knife again and placed it on his wrist, the female student told the pupil to put it away and held the pupil's forearm with her hand in fear that the pupil was going to cut himself. She stated that the pupil told her that he loved her and asked if she loved him. The pupil also said to the female student "if you leave me I'll stab you." The pupil then took the blade of the knife and held it to the female student's wrist. The female student told the pupil to stop, at which time the pupil took the blade and slid it to the female student's ribs. The principal also testified that the pupil, when interviewed, admitted to bringing a knife to school on both October 16, and 17, 2008, and admitted to threatening himself and the female student with the knife. When he asked the pupil for the knife, the pupil pulled the knife from his pocket and gave it to him. In addition, the principal testified that on October 24, 2008, an IEP meeting was held to determine if the pupil was a student with a disability and it was determined that the pupil did qualify for special education services. Following the IEP meeting, a manifestation meeting was held where the IEP team determined that the pupil's behavior was not a direct result of his disability.

The pupil's parent is alleging that the pupil's behavior is due to his disability and challenges the school district's manifestation determination. However, the state superintendent

has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's determination that the pupil's conduct was not a manifestation of his disability may be addressed using the due process appeal procedures found in subchapter V of Chapter 115, Wisconsin Statutes. The department maintains an extensive library of materials to explain procedures related to special education due process appeals. These materials are easily accessible at the department's website at <http://dpi.wi.gov/sped/tm-spededtopics.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

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 L B by the Birchwood School District Board of Education is affirmed.

Dated this 16th day of April, 2009



Anthony S. Evers, Ph.D.

Deputy State Superintendent of Public Instruction

Parties to this appeal are: