

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 Menominee Indian School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-10</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 Menominee Indian School District Board of Education to expel the above-named pupil from the Menominee Indian School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 6, 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 March 9, 2009, from the district administrator of the Menominee Indian School District. The letter advised that

a hearing would be held on March 18, 2009 that could result in the pupil's expulsion from the Menominee Indian School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parent by 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 the pupil was in the possession of and sold Dramamine to students while at school on February 25, 2009.

The hearing was held in closed session on March 18, 2009. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 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 March 23, 2009, was mailed separately to the pupil and her parent. The order stated that the pupil was expelled through the remainder of the 2008-09 school year. Minutes of the school board 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 alleges that the pupil's conduct does not warrant expulsion because she didn't ingest the Dramamine, but only possessed it. Further, she claims that the interest of the school did not demand the pupil's expulsion. The record in this case includes a Notice of Expulsion Hearing alleging that the pupil possessed and sold Dramamine pills to other students, while at school, on February 25, 2009. Notes taken during the expulsion hearing, also included within the record, include testimony from the pupil admitting to bringing the Dramamine to school and "trading" it

for money with other students. Although the pupil did not ingest the substance, she did supply it to other students. Expulsions based upon mere possession of dangerous substances have routinely been upheld by the state superintendent. *Brian M. v. Lodi School District*, Decision and Order No. 425 (October 23, 2000); *Andrew C. v. Milwaukee Public School District*, Decision and Order No. 386 (June 11, 1999); *Julian H. v. Milwaukee Public School*, Decision and Order No. 379 (April 20, 1999); *Shannon T. v. Milwaukee Public School District*, Decision and Order No. 354 (April 16, 1998); *Joshua S. v. Beloit-Turner School District*, Decision and Order No. 307 (January 14, 1997); *Donald P. v. Westby Area School District*, Decision and Order No. 299 (August 9, 1996); *Robin L. v. East Troy Community School District*, Decision and Order No. 253 (June 21, 1995); and *Jared L. v. Menomonee Falls School District*, Decision and Order No. 218 (February 10, 1994). The school district did not violate any procedural requirement by finding that it is in the school's best interest to expel a pupil for possessing of and supplying Dramamine to other students while at school.

The appeal claims that the school district did not follow its own local school policies and procedures. The school board's policies in this situation are irrelevant to my determination. I am not authorized to review, approve or disapprove of school policy, I am only authorized to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); and *Tony R. v. Lake*

*Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

Finally, the appeal claims that the school district did not follow procedural requirements because the pupil and her parent were not given an opportunity to hear the school district present its case to the board, were not allowed to cross-examine witnesses and because the pupil and her mother were not provided with minutes of the expulsion hearing. The record includes Special Board of Education Meeting Minutes which outline the events of the expulsion hearing. The minutes indicate the pupil and parent were present for the expulsion hearing. The minutes also indicate administration officials presented information, provided copies to the student and parent, and gave the student and parent an opportunity to ask questions and address the board. The parent asked questions and both the student and parent addressed the board. While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the state superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). In this case, the minutes included in the record comply with procedural requirements. Further, all procedural requirements were met.

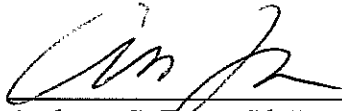
#### **CONCLUSIONS OF LAW**

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 Menominee Indian School District Board of Education is affirmed.

Dated this 5<sup>th</sup> day of June, 2009



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