

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>E K</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-12</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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 21, 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 February 19, 2009, from the White School Principal of Park High School. The letter advised a hearing would

be held on March 2, 2009 that could result in the pupil's expulsion from the Racine Unified School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parent by first-class mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of a school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil engaged in sexual misconduct while at school on February 13, 2009.

The hearing was held in closed session on March 2, 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 hearing officer 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 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 Independent Hearing Officer, dated March 2, 2009, was mailed separately to the pupil and her parent. The order stated the pupil was expelled through the end of the 2008-09 school year. The School Board reviewed the Independent Hearing Officer's order on March 16, 2009, and approved it. The pupil and her parent were advised by letter dated March 17, 2009 of the board's decision. An audiotape, a transcript and exhibits introduced at the expulsion 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 two issues which require consideration. The appeal letter alleges that the administration did not comply with due process procedures, but does not specify what part(s) of due process procedure was violated. The hearing record includes a Notice of Expulsion Hearing dated February 19, 2009 that was mailed separately to the pupil and

her parent. The notice alleges that the pupil engaged in sexual misconduct while at school on February 13, 2009, and informed the pupil and her parent that a hearing would be held that could result in the pupil's expulsion from school. In addition, the notice included the date, time and location of the expulsion hearing. Also included within the hearing record was a transcript of the hearing. The transcript reflects that a hall monitor who discovered the pupil engaging in sexual misconduct and the school principal testified describing the details of the incident. The transcript also indicates that the pupil and her parent were given the opportunity to present evidence and cross-examine witnesses. After the hearing, the hearing officer determined that expulsion was the appropriate remedy of punishment for the pupil's misconduct and the pupil and her parent were notified separately of the hearing officer's decision. The school board approved the hearing officer's order and the pupil and her parent were notified of the board's decision. After reviewing the record, I find that the school district did not violate any procedural requirements.

The appeal letter also claims that the school district engaged in gender discrimination by ordering expulsion. However, an expulsion appeal is not the appropriate context within which to challenge a district's application of gender provisions to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). Wisconsin school law, sec. 118.13, Stats., prohibits "discrimination" against a child if the child is a member of a protected class. Each school district is required to have a written pupil non-discrimination complaint process. If a parent believes his or her child is being discriminated against at school, he or she may file a complaint with the district which ultimately must be decided by the school board. If he does so, and receives a negative determination from the district, he may file an appeal under Wis. Stats. 118.13.

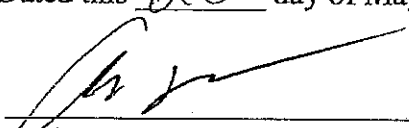
CONCLUSIONS OF LAW

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 E. K. [redacted] by the Racine Unified School District Board of Education is affirmed.

Dated this 20th day of May, 2009



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