

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

R C

by Milwaukee School District  
Board of Education

DECISION AND ORDER

Appeal No.: 09-EX-18

**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 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 July 15, 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 June 16, 2009, from the student service coordinator of the Milwaukee School District. The letter advised that a

hearing would be held on June 23, 2009 that could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and his parents by first-class mail. The letter alleged that the pupil engaged in conduct while at school or while under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the student possessed/brandished a three-inch knife blade on June 4, 2009, at Lincoln Center of the Arts Middle School.

The hearing was held before an independent hearing officer on June 23, 2009. 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 deliberated in closed session 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 hearing officer, dated June 23, 2009, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled until January 27, 2010. The school board reviewed the independent hearing officer's order on June 25, 2009 and approved it. The pupil and his parent were advised by letter dated June 29, 2009 of the board's decision. 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 pupil alleges that because the incident occurred on the school bus and not at school, the school district's description of the pupil's conduct in the June 16, 2009, Notice of Student Expulsion Hearing that "the student engaged in conduct while at school or while under the supervision of

school authority which endangered the property, health, or safety of others” is a procedural violation. In the June 16, 2009, Notice, the pupil is accused of possessing and brandishing a three-inch knife blade on June 4, 2009, at Lincoln of the Arts Middle School. The transcript included in the record includes testimony from the pupil, his mother and school officials involved with the incident. Although the hearing addressed an incident on the school bus on June 4, 2009 that involved the pupil possessing and showing a knife, there was also testimony and exhibits included in the record that reflected that the pupil possessed the knife while at school, earlier that day. Specifically, the assistant principal testified that the pupil admitted to her that he brought the knife to school. He also admitted that he put the knife in his locker.

Although the pupil didn’t display the knife while at school, he admits to possessing during the school day, while on school grounds on June 4, 2009. Previous expulsions based upon possession of a knife while on school grounds have been repeatedly upheld by the state superintendent. *Jesse M. K. v. Tri-county Area School District*, Decision and Order No. 266 (January 2, 1996); *Brent S. v. Mondovi School District*, Decision and Order No. 290 (May 23, 1996); *Jesse P. v. Hustiford School District*, Decision and Order No. 293 (June 10, 1996); *Michael L. v. New Richmond School District*, Decision and Order No. 326 (June 2, 1997); *James D. v. Greenfield School District*, Decision and Order No. 352A (April 7, 1998); *Stacey R. v. Milwaukee School District*, Decision and Order No. 362 (June 1, 1998). Therefore, the school district did not commit a procedural violation by describing the pupil’s conduct as occurring while at school or while under the supervision of a school authority which endangered the property, health, or safety of others.

The pupil also complains about the school board not following the assistant principal’s recommendation that the pupil be transferred to another school as consequence of his

misconduct, but rather ordered expulsion. A pupil's expulsion period is determined by the school board. While school officials may offer suggestions or recommendations pertaining to alternative punishment, the school board is not required to follow them. Therefore, the school board did not err by ordering expulsion as an appropriate remedy for the pupil.

Finally, the pupil claims that expulsion is an excessive punishment for the conduct at issue. The pupil states that he has already been punished by not being able to attend the last six days of school and as a consequence missed field trips, special events and the graduation ceremony. Further, he asks that his personal challenging circumstances be taken into consideration and the expulsion term be modified. 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.


**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 R C by the Milwaukee School District Board of Education is affirmed.

Dated this 11 day of September, 2009

  
\_\_\_\_\_  
Michael J. Thompson  
Deputy State Superintendent of Public Instruction