

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>D P</p> <p>by Dodgeland School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 09-EX-22</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 Dodgeland School District Board of Education to expel the above-named pupil from the Dodgeland School District. This appeal was filed by the pupil and received by the Department of Public Instruction on August 25, 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 May 26, 2009, from the principal of the Middle School/High School of the Dodgeland School District. The

letter advised that a hearing would be held on June 1, 2009 that could result in the pupil's expulsion from the Dodgeland School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents 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 possessed marijuana with the intent to deliver at Dodgeland Schools on May 4, 2009.

The hearing was held in closed session on June 1, 2009. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. During the hearing, the pupil's parent requested a copy of police reports the school board was relying upon. The school board denied the request and suggested that the pupil's parent acquire a copy of the reports from the District Attorney's Office. Because there was an ongoing investigation, the District Attorney's Office would not release a copy of the reports to the pupil or his pupil's parents.

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 June 1, 2009, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through his 21st birthday.

The pupil's parent requested that the school board hold another hearing to reconsider the pupil's expulsion because the school board was provided with information, specifically a police report, which was not provided to the pupil or his parents. The school board granted the request and held another hearing on July 20, 2009 to reconsider the pupil's expulsion.

The hearing was held in closed session on July 20, 2009. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents 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 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 July 20, 2009, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through his 21st birthday.

Minutes of both school board expulsion hearings, an audiotape of the July 20, 2009 hearing and exhibits introduced at the July 20, 2009 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 district committed a procedural violation because the school board was provided with police reports that the pupil and his parents were denied access to at the June 1, 2009 hearing. The pupil and his parents should have been provided access to all information considered by the board. *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996). However, this error was cured when the board reconvened on July 20, 2009. The record reflects that after the June 1, 2009 hearing, the pupil's parent requested the school board to schedule another hearing to occur after the pupil and his

parents were provided with and had an opportunity to review the incident reports. The school board granted the pupil's parent's request and all exhibits, including the police incident reports, were re-considered at the July 20, 2009 hearing. Therefore, the school board cured this defect.

The appeal also indicates that because the pupil's accuser was not present at the expulsion hearing, the expulsion should be overturned. The record in this case includes police incident reports reflecting the accuser's accusations against the pupil that were heavily relied upon during the expulsion hearing. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

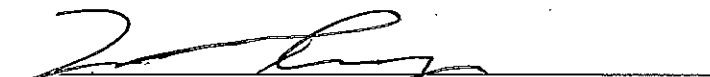
However, while a school board may rely upon hearsay, according to Wis. Stat. § 118.126(5)(b), a school board may not order an expulsion based solely on information provided within a law enforcement officer's records. *Derek R. v. Holmen School District Board of*

*Education*, Decision and Order No. 399 (August 20, 1999). Based upon a complete review of the record, it is clear that the board was provided only the police reports and the testimony of the officer at the hearings. In addition, the minutes from the July 20, 2009 hearing state that principal's information was based on the report filed by the police officer and that nothing internally had been brought to his attention. Because the school board relied solely on the officer's incident reports, I find that the school district violated Wis. Stat. § 118.126(5)(b), and therefore did not comply with all of the procedural requirements of Wis. Stat. § 120.13(1)(c).

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of D P by the Dodge County School District Board of Education is reversed.

Dated this 20<sup>th</sup> day of October, 2009

  
Michael J. Thompson, Ph.D.  
Deputy State Superintendent of Public Instruction