

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A . . . B</p> <p>by Milwaukee Public School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-02</p>
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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 Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District. This appeal was filed by the pupil and received by the Department of Public Instruction on January 5, 2010.

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 Student Expulsion Hearing," dated November 20, 2009, from the Student Service Coordinator of the Milwaukee Public School

District. The letter advised that a hearing would be held on December 4, 2009 that could result in the pupil's expulsion from the Milwaukee Public 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 participated in strong armed robbery of another student during the school day while at Pulaski High School on November 6, 2009.

The hearing was held in closed session before an independent hearing officer on December 4, 2009. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the hearing officer 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. He 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 was reviewed and adopted by the board on December 17, 2009. Both the hearing officer's order and the board's decision were mailed separately to the pupil and his parent. The order stated the pupil was expelled through September 1, 2010. 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 two issues which require consideration. The first issue raised in the appeal claims that the pupil did not participate in the robbery against the victim, but instead tried to help him and therefore challenges the sufficiency of the evidence. The record in this case includes a transcript of the expulsion hearing which includes the assistant principal's

testimony detailing his investigation regarding the alleged misconduct. At the hearing, the assistant principal testified that on November 6, 2009, a student informed the School Resource Officers that he had been robbed during third block class. The victim stated that he was called to the back of the classroom by other students where one student held his hands behind his back while two other students, one being the pupil at issue, went into his pockets and took items including a cell phone, bus tickets, cigarettes and two lighters. On this date the victim refused to identify the students who participated in the robbery. On November 11th, the victim spoke with the School Resource Officers again, with the assistant principal in attendance, and positively identified the pupil as one of the students participating in the robbery by name and by using the identification/picture book. After the pupil was identified as a participant of the robbery, he was pulled out of class and placed in the School Resource Officer's office.

Also at the hearing, the pupil and his mother testified that the pupil did not rob the victim but instead attempted to help him during the robbery. She also states that she believes the administration twisted the truth. The hearing officer was in the best position to resolve any conflicts in testimony. In this circumstance, it was within the hearing officer's discretion to give weight to the evidence and arguments, as it deemed appropriate and to judge the credibility of witnesses. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111N.W. 2d 198 (1961). See also *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order 395 (August 16, 1999); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995); and *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). In this case, the victim positively identified the pupil both by name and picture as one of the participants of the

robbery. After reviewing the record, I find a reasonable view of the evidence supports the board's decision to expel.

The pupil included two notarized statements with his appeal: one written by the victim the second written by the victim's mother. Both statements say that the pupil did not participate in the robbery. Because these statements were not introduced at the hearing officer, they cannot be used for the first time on appeal. *Travis J.M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); *Tony R. v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995) and *Jennifer C. v. Winter School District Board of Education*, Decision and Order No. 264 (December 6, 1995).

In reviewing the record in this case, I find the school district did comply with all of the procedural requisites. I, therefore, affirm this expulsion.

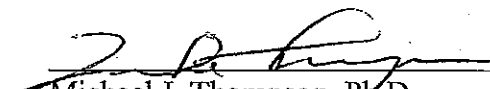
CONCLUSIONS OF LAW

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

Dated this 4th day of March, 2010


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