

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of J. N. by Milwaukee Public School District Board of Education	DECISION AND ORDER Appeal No.: 10-EX-04
---	--

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 February 19, 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 January 14, 2010, from the Student Service Coordinator of the Milwaukee Public School

District. The letter advised a hearing would be held on February 2, 2010 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parent. 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 student was in possession of a weapon (gun) on Monday, January 4, 2010, at Riverside University High School.

The hearing was held in closed session before an independent hearing officer on February 2, 2010. 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 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. She 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 February 2, 2010, was reviewed and adopted by the board on February 25, 2010. 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 until 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 one issue which requires consideration. The pupil alleges that the expulsion hearing was unfair because the pupil was not provided with alternative education services. During the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School*

District Board of Education, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). School districts have authority to refuse to accept any student during the term of an expulsion from another school district, § 120.13(1)(f). Thus, while a pupil may have difficulty enrolling in another school, it is not a basis for reversing 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 J N by the Milwaukee Public School District Board of Education is affirmed.

Dated this 9th day of April, 2010


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