

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>E H</p> <p>by West Allis School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-06</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 West Allis School District Board of Education to expel the above-named pupil from the West Allis School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 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 Expulsion Hearing," dated January 6, 2010, from Principal Borland of the West Allis School District. The letter advised a hearing

would be held on January 19, 2010 that could result in the pupil's expulsion from the West Allis 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 on December 21, 2009, the pupil, while at the school Winter Chorus concert, began to physically wrestle with his mother over a cell phone. The principal stuck out his hand to separate the two when the pupil turned and punched him in the chest and then tried to lunge at him only to be held back by his mother.

The hearing was held in closed session on January 19, 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 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 January 20, 2010, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled through the end of the first semester of the 2010-2011 school year. Minutes of the school board expulsion hearing, audiotapes 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. In his appeal, the pupil claims that the expulsion hearing was not handled appropriately and proper procedures were not followed. Specifically, the pupil alleges that the school principal assured the pupil and his mother that they did not need an attorney at the expulsion hearing. The hearing

record in this case includes separate notice to the pupil and his mother dated January 6, 2010. In the notice, the pupil and his mother are informed about the pupil's alleged behavior, information regarding possible expulsion and of their rights, including that the pupil "may be represented at the expulsion hearing." There is nothing in the record to suggest that the pupil and his mother were not informed or denied of their right to counsel at the hearing. Therefore, I do not find that the school district violated this procedural requirement.

The pupil also claims that the school district failed to notify him about the option of gathering witness statements for use at the expulsion hearing. This is not a procedural requirement. At the expulsion hearing, school districts are required to give the pupil and the pupil's parent the opportunity to present evidence, to cross-examine witnesses, and to respond to the school district's allegations. Minutes from the expulsion hearing included in the record reflect that the pupil and his mother were given these opportunities. Therefore, the school district did not violate this procedural requirement.

The pupil also alleges that he has been diagnosed with a medical condition impacting his behavior and ability to succeed in school. The appeal claims that the school district failed to inform the pupil and his mother about a 504 accommodation plan and/or of the option of being evaluated for special education services. The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions or Sec. 504 to a particular pupil. Such a challenge is generally beyond the scope of Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P.*

v. *Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990).

Section 504 is a shorthand reference to Section 504 of the Rehabilitation Act of 1973. It is administered by the U. S. Department of Education, Office for Civil Rights. The Wisconsin Department of Public Instruction has no enforcement authority for issues arising under Section 504, including interpretation of requirements related to Section 504 plans, services provided under Section 504, or due process procedures about Section 504 issues. Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing. For further information, the pupil may contact the school district regarding the procedures set for an impartial hearing or he may contact the U.S. Department of Education/Office for Civil rights in the Chicago office (Telephone (312) 730-1560). For further information about sec. 504, please review the FAQ produced by the Office of Civil Rights found at <http://www2.ed.gov/about/offices/list/ocr/504faq.html#safeguards>.

In regards to any special education concern the pupil or parent may have, the department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://dpi.wi.gov/sped/tm-specedtopics.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

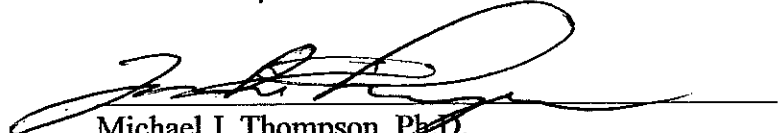
CONCLUSIONS OF LAW

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 H by the West Allis School District Board of Education is affirmed.

Dated this 14 day of May, 2010


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