

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>K. J.</p> <p>by Monona Grove School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-07</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 Monona Grove School District Board of Education to expel the above-named pupil from the Monona Grove School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 26, 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 February 23, 2010, from the district administrator of the Monona Grove School District. The letter advised a

hearing would be held on March 5, 2010 that could result in the pupil's expulsion from the Monona Grove School District through his 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 and that the pupil repeatedly refused or neglected to obey school rules. The letter specifically alleged that on February 18, 2010, the pupil threatened another student to fight, and then proceeded to run away from the associate principal and police liaison officer in the school building. The pupil had to be physically restrained on two separate occasions, but escaped both time. On the final occasion, the pupil charged at the associate principal running into him. In addition, the district referenced and attached the pupil's discipline report citing 60 instances of misconduct in support of the district's allegation that the pupil repeatedly refused or neglected to obey school rules. The references included within the discipline report included acts of the pupil being disrespectful, disruptive, stealing, engaging in inappropriate school bus conduct, not serving detentions, violating school rules, using inappropriate language, wandering the halls with no pass, and being under the influence of marijuana.

The hearing was held in closed session before an independent hearing officer on March 5, 2010. 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 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 and that the pupil did repeatedly refuse and neglect to obey school

rules. The 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 March 16, 2010, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through the 2010-2011 school year. The school board reviewed the independent hearing officer's order on March 17, 2010 and approved it. The pupil's parents were advised by Expulsion Order dated March 17, 2010 of the board's decision and the pupil was advised of the board's decision via letter dated May 5, 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 several issues which require consideration. In his appeal, the pupil alleges that the school administration did not follow district policy in providing a safe, harassment free environment for all students. Under section 120.13(1)(c), my review is limited to review expulsion decisions to ensure that the pupil has been provided adequate procedural due process. Review or approval of school policy is beyond the scope of this authority. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at § 120.13(1)(c). *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); and *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995). If the pupil believes he has been discriminated against, he must follow legal procedures adopted by the school board pursuant to section 118.13.

The appeal also alleges that the assistant principal breached the pupil's confidentiality rights by informing other students at school that the pupil was suspended and was going to be expelled. In addition, the pupil claims that he was denied legal representation while at the JRC. In reviewing an expulsion appeal, 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. Therefore, whether or not the assistant principal informed other students of the pupil's suspension and possible expulsion and whether or not the pupil was in fact denied legal representation while at the JRC are both beyond the scope to my review. If he believes pupil confidentiality laws were violated, he can file a written complaint concerning his allegations to the Family Policy Compliance Office at: Family Compliance Office, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5920 or contact the FPCO office at 1-800-872-5327.

The pupil also alleges that the school district presented a modified copy of the pupil's disciplinary record to the hearing officer at the hearing compared to the copy the district provided the pupil and his parent prior to the expulsion hearing. The pupil raised this concern at the hearing and the officer was in the best position to resolve this conflict in testimony. *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).

The appeal also raises questions about the adequacy of the district's evaluation of the pupil to determine special education needs. 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 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). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. 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.

Finally, the appeal claims that expulsion is an extreme punishment given the pupil's misconduct at issue. 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 hearing officer 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 the extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

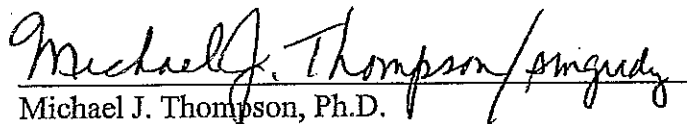
CONCLUSIONS OF LAW

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 K J by the Monona Grove School District Board of Education is affirmed.

Dated this 25th day of May, 2010


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