

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

K K

by Madison Metropolitan School District
Board of Education

DECISION AND ORDER

Appeal No.: 10-EX-15

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 Madison Metropolitan School District Board of Education to expel the above-named pupil from the Madison Metropolitan School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 28, 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 May 12, 2010, from the expulsion and truancy coordinator of the Madison Metropolitan School District. The

letter advised a hearing would be held on May 21, 2010 that could result in the pupil's expulsion from the Madison Metropolitan 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 on May 6, 2010, the pupil participated in a drug transaction as the purchaser of an illegal drug, marijuana, while at O'Keeffe Middle School.

The hearing was held in closed session before an independent hearing officer on May 21, 2010. The pupil and his parents appeared at the hearing with 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 administration presented their evidence, the pupil and the district reached an agreement regarding the administration's recommendation concerning the length and conditions of the expulsion period.

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. The hearing 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 May 21, 2010, was mailed separately to the pupil and his parents. The order adopted the recommendations as agreed to by the parties. It stated that the pupil was expelled until the beginning of the second semester of the 2011-2012 academic year with the opportunity for early reinstatement, including participation in extracurricular athletics beginning the first semester of the 2010-2011 academic school year.

The school board reviewed the independent hearing officer's order on June 3, 2010 and modified it. The board accepted the recommendation to permit the pupil to reinstate at the beginning of the 2010-11 school year but rejected the recommendation that he also be permitted to participate in extracurricular programs at that time. Instead, the board determined that the pupil will not be permitted to participate in school-sponsored extracurricular or athletic programs until the beginning of the second semester of the 2010-2011 school year. 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 argues that because a settlement agreement was reached before the pupil presented evidence during the expulsion hearing, the school board erroneously relied on an incomplete hearing record when modifying the hearing officer's order. The pupil suggests that he should have been permitted to present further evidence to the school board. The pupil asks the state superintendent to modify the expulsion order to be consistent with the hearing examiner's recommended decision.

The pupil was not precluded from presenting further evidence at the expulsion hearing. Even after reaching an agreement concerning conditions of expulsion, the pupil could have presented evidence. Thus, the hearing was complete and there was no violation of due process. Secondly, there is no statutory right to provide further evidence to the school board when they review the expulsion order recommended by the hearing examiner. The school administration is only required to notify the pupil and his parents that the expulsion would remain in effect while the order was reviewed by the school board; they are not required to notify the pupil or his parents of the date, time or place of the school board meeting. *R. W. v. Kenosha School District Board of Education*, Decision and Order No. 631 (September 25, 2008). In this case, the pupil was notified of the time, date and place of the board meeting. He was also informed, in writing, that he may present written arguments to the board regarding the hearing officer's recommendation. The pupil did not take advantage of that opportunity. Even though it was not required, the pupil was given an opportunity to provide the board with additional information.

Thus, his argument that he should have been permitted to present evidence to the board must fail. Finally, the pupil suggests that his request for the board to reconsider its decision should have been granted. The board is not required to grant requests for reconsideration. Therefore, their refusal to do so is not a reason for the state superintendent to reverse or modify the board's decision.

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 K K by the Madison Metropolitan School District Board of Education is affirmed.

Dated this 23rd day of September, 2010


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

