

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>G C</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-16</p>
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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 Racine Unified School District Board of Education to expel the above-named pupil from the Racine Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on August 11, 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

In all expulsion appeals, the department of public instruction provides written notice of the appeal to the school district. The school district is required to submit the record of the

expulsion proceedings to the state superintendent. The school district did not submit a complete record of the proceedings. The department contacted the school district multiple times and requested a copy of the Notice of Expulsion Hearing reflecting the pupil's and the pupil's parents rights regarding an expulsion hearing and evidence that the pupil and the pupil's parent received separate copies of that notice. A representative of the district indicated that no such notice existed. The only records submitted by the district are: A letter dated June 7, 2010 indicating that the pupil's mother waives her right to a five-day notification for an expulsion hearing; a copy of the hearing officer's proposed decision and cover letter addressed to the pupil and to his mother; copy of the tape of the expulsion hearing; a copy of the school board's decision adopting the hearing officer's decision; and, a three page police report.

The hearing was held in closed session before an independent hearing officer on June 9, 2010. 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 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. 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 was mailed separately to the pupil and his mother. The order stated the pupil was expelled until the end of the 2010-11 school year with the opportunity for early reinstatement. The school board reviewed the independent hearing officer's order on June 21,

2010 and approved it. The pupil's parent was advised of the board's decision via letter dated June 22, 2010.

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. The pupil's attorney claims that the expulsion hearing notice was untimely, partial, confusing and

insufficient. Specifically, he alleges the district did not provide five days written notice of the hearing, that the notice was not sent by mail, and that the allegations concerning the pupil were unfairly vague.

Based upon the record provided by the school district, I agree. The record provided by the school district did not include a Notice of Expulsion Hearing and despite multiple requests from the Department, the school district did not provide a copy. Therefore, there is nothing in the record to support a finding that the pupil and his parent were properly advised of their rights regarding an expulsion hearing nor is there evidence to reflect that the pupil and his parent received separate notice five days in advance of the hearing.

Section 120.13(1)(c)4. requires that not less than five days written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The notice shall state all of the following:

- a. The specific grounds, under subd. 1., 2. or 2m., and the particulars of the pupil's alleged conduct upon which the expulsion proceeding is based.
- b. The time and place of the hearing.
- c. That the hearing may result in the pupil's expulsion.
- d. That, upon request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed.
- e. That the pupil and, if the pupil is a minor, the pupil's parent or guardian may be represented at the hearing by counsel.
- f. That the school board shall keep written minutes of the hearing.
- g. That if the school board orders the expulsion of the pupil the school district clerk shall mail a copy of the order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian.
- h. That if the pupil is expelled by the school board the expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the school board's decision to the department.
- i. That if the school board's decision is appealed to the department, within 60 days after the date on which the department receives the appeal, the department shall review the decision and shall, upon review, approve, reverse or modify the decision.
- j. That the decision of the school board shall be enforced while the department reviews the school board's decision.

- k. That an appeal from the decision of the department may be taken within 30 days to the circuit court for the county in which the school is located.
- L. That the state statutes related to pupil expulsion are ss. 119.25 and 120.13 (1).

It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature, and failure to comply with the statutory requirement renders the expulsion void. See *Telsea M. v. East Troy Community School District Board of Education*, Decision and Order No. 408 (February 24, 2000); *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order No. 325 (May 19, 1997); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); and *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 143 (July 2, 1986). Because the board did not comply with the notice requirements of §120.13(1)(c)4., I am compelled to overturn the expulsion.

The appeal also alleges that a school rule was not violated because the paint gun involved was not a “look alike,” made to resemble a firearm. Whether the pupil violated a school rule is only relevant if the pupil is alleged to have engaged in “repeated refusal or neglect to obey school rules” as stated in §120.13(1)(c)1. Because the record does not contain a notice of expulsion hearing, I cannot speculate as to the grounds of expulsion. I do note that the hearing officer based his decision upon a different ground for expulsion, finding that the pupil “engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others.” The tape of transcript supports such a finding, if that ground had been included in the notice of hearing.


Because the school district failed to comply with the procedural requirements pertaining to expulsions I am compelled to reverse the expulsion order. This decision does not condone the pupil’s conduct, nor does it suggest expulsion is inappropriate. If the district chooses, it may

remedy these errors by providing proper notice of the expulsion hearing, rehearing the expulsion, and providing proper notice of the expulsion decision. See *Joshua D. v. Tomorrow River School District*, Decision and Order No. 415 (May 21, 2000); *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and, *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

ORDER

IT IS THEREFORE ORDERED that the expulsion of G. C. by the Racine Unified School District Board of Education is reversed.

Dated this 28th day of September, 2010


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