

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>T M</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 10-EX-22</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 December 9, 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 October 14, 2010, from the district administrator of the Racine Unified School District. The letter advised a

hearing would be held on October 22, 2010 that could result in the pupil's expulsion from the Racine Unified School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his guardian by first-class 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 October 6, 2010 while at school, the pupil was involved in a strong-arm robbery of another Park High School student on the soccer field. The pupil and two other boys forcibly took a cell phone from the victim.

The hearing was held before an independent hearing officer on October 22, 2010. The pupil, his father and his grandmother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil, his father and his grandmother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the hearing officer deliberated and 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 October 22, 2010, was mailed separately to the pupil and his guardian. The order stated the pupil was expelled through the end of the 2010-2011 school year. The school board reviewed the independent hearing officer's order on November 15, 2010 and approved it. The pupil and his guardian were advised by letter dated October 15, 2010¹ of the board's decision. An audiotape of the expulsion hearing and exhibits introduced at the hearing are part of the record.

¹Although the letter notifying the pupil and his parents of the school board's decision is dated October 15, 2010, it is clear that the date is a typo and should have been dated November 15, 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 one issue which requires consideration. The appeal asks that the pupil be given a second chance. 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 school board 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. However, after reviewing the record in this case, I find that the school board did not follow all procedural requirements.

The record in this case includes a police report reflecting the accusations made against the pupil that was the sole evidence relied upon during the expulsion hearing. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No.

170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

However, while a school board may rely upon hearsay, according to Wis. Stat. § 118.127(2), a school board may not order an expulsion based solely on information provided within a law enforcement officer's records. *Derek R. v. Holmen School District Board of Education*, Decision and Order No. 399 (August 20, 1999). Based upon a complete review of the record, it is clear that the sole evidence presented to the board was testimony from a school official referencing only the law enforcement record. In addition, the principal testified at the hearing that the information he presented was solely based on the police report. He testified he did not interview the pupil because he was taken to detention immediately after the incident. The principal did not obtain or present any evidence beyond these law enforcement records. Because the school board relied solely on the law enforcement record, I find that the school district violated Wis. Stat. § 118.127(2). Based upon this violation, the procedural requirements were not met and I must overturn the expulsion. This decision does not condone the pupil's conduct, nor does it suggest the expulsion ordered by the board is inappropriate. However, I must uphold the requirements contained in the statutes.

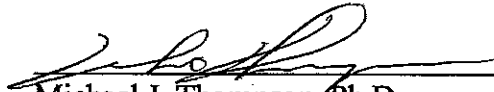
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of §120.13(1)(c).

ORDER

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

Dated this 7th day of February, 2011



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