

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

D. S

by Merrill Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 11-EX-05

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 Merrill Area School District Board of Education to expel the above-named pupil from the Merrill Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 17, 2011.

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 March 2, 2011, from the district administrator of the Merrill Area School District. The letter advised a hearing

would be held on March 8, 2011 that could result in the pupil's expulsion from the Merrill Area School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by regular and certified mail.¹ 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 the pupil brought marijuana to school on February 22, 2011, February 23, 2011, and February 24, 2011. The notice also alleged that on February 22, 2011, the pupil provided marijuana for other students to smoke, paraphernalia in which to smoke the marijuana, and that the pupil smoked marijuana in two separate locations of Prairie River Middle School (2nd floor boys bathroom and the boys locker room).

The hearing was held in closed session on March 8, 2011. The pupil and his parent appeared at the hearing with a student advocate. 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 March 8, 2011, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled

¹ The Notice was mailed on March 2, 2011 to a wrong address which transposed the last two numbers of the street address, but contained the proper street name, city and zip. As discussed later in this decision, this typographical error on the envelope did not appear to have any effect on the delivery of the letter, either by regular or certified mail.

through June 30, 2016, with the opportunity for early readmission. Exhibits introduced at the expulsion hearing and an audiotape of the expulsion 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. The appeal alleges that the district committed a procedural violation claiming that the school

principal acted as law enforcement because he questioned and searched the pupil without a parent present. The pupil attempts to equate the principal's investigation to a law enforcement interrogation. There is no basis in the record to make such equation. Expulsion hearings are not criminal proceedings. The exclusionary rule, which in criminal cases may demand the exclusion of illegally obtained evidence does not apply to administrative expulsion hearings. *See e.g. In the Interest of Thomas J.W.*, 213 Wis. 2d 264, 276 (Ct. App. 1997); *State v. Carpenter*, 197 Wis. 2d 252, 541, N.W. 2d 05 (1995); *State ex re. Struzik v. DHSS*, 77 Wis. 2d 216, 221 (1977). This principle has been consistently applied in expulsion hearings. *Jeremy B. v. Waukesha School District Board of Education*, Decision and Order No. 395 (August 16, 1999); *Leo P. v. Whitewater Unified School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983). The board was free to determine whether the admission was reliable. This is a credibility determination that is solely within the discretion of the board. The district did not commit a procedural violation because the school principal interviewed and searched the pupil without a parent present.

The appeal also claims that the pupil and his parent were not provided with 5-day notice of the expulsion hearing as required by law. The record includes a copy of the March 2, 2011 Notice of Expulsion Hearing notifying the pupil and his parent of the March 8, 2011 expulsion hearing as well as an affidavit from the district that the notice was mailed by regular and certified mail on March 2, 2011. Due to a typographical error, the notice was addressed inaccurately. The last two digits of the three digit house number were transposed. However, nothing in the record suggests this error caused a delay in the delivery of the letter. A record of the certified mail

delivery shows that delivery was attempted on March 3 (five days before the hearing) and eventually was signed for by a person at the pupil's residence on March 7.² The record also shows that both the regular and the certified mail were sent on March 2.

Wisconsin Statutes §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. "Sent" is not the same as received. *Derek D. v. Flambeau School District Board of Education*, Decision and Order No. 451 (January 28, 2002). *Laura F. v. West Allis School District*, Decision and Order No. 527, December 20, 2004. These five days include weekends and holidays. *Lori P. v. Cudahy School District Board of Education*, Decision and Order No. 169 (May 21, 1990); *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213, (December 20, 1993); *Joshua K. v. Clinton Community School District Board of Education*, Decision and Order No. 216, (January 31, 1994); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222, (March 10, 1994); *Travis J. M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423, (September 25, 2000). In this case, the notice was sent six days before the hearing and received one day before the hearing. Therefore, there was no statutory violation.

CONCLUSIONS OF LAW

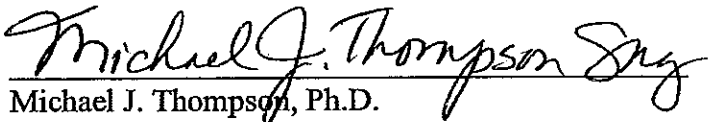
In reviewing the record in this case, I find the school district did comply with all of the procedural requirements. I, therefore, affirm this expulsion.

² The mail was "signed for" by Kris Strasser. A simple internet search revealed that, according to records kept by the State of Wisconsin, Mr. Strasser lives at the same address as the pupil.
<http://offender.doc.state.wi.us/public/search/sor>.

ORDER

IT IS THEREFORE ORDERED that the expulsion of D. S by the Merrill
Area School District Board of Education is affirmed.

Dated this 16th day of May, 2011


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