

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>M. P.</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 11-EX-09</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 April 15, 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 February 9, 2011, from the Assistant Director of Alternative Education of the Racine Unified School District.

The letter advised a hearing would be held on February 17, 2011 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 her parents by regular 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 January 20, 2011, while at Keith R. Mack Center, the pupil verbally assaulted and threatened a teacher. In addition, in class she was verbally defiant and disruptive by describing overwhelming feelings of evil, stating that she: wanted to blow up the police station; wanted to shoot through certain windows at the police station; wanted to go Virginia Tech on the school; and, stated that she had a hit list.

The hearing was held in closed session on February 17, 2011 before an independent hearing officer. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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. 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 February 17, 2011, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through the end of the 2012-2013 school year. The school board met on March 21, 2011 and affirmed the hearing officer's order.

Minutes of the school board expulsion hearing, an audiotape 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. The appeal claims that the hearing officer based his decision to expel the pupil on a teacher who

testified at the hearing. It was within the hearing officer's discretion to give weight to the evidence and arguments, as he deemed appropriate and to judge the credibility of witnesses. 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). It is not a procedural violation to base a decision to expel on the testimony of a witness.

The appeal also claims that the pupil has been diagnosed with EBD, is now in therapy and asks that she be allowed back in school. The record, however, does not indicate that the pupil was identified as a child with a disability. 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). Further, a referral for an evaluation can be made to the district at any time. 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 a circuit court judge ordered that the pupil be allowed back in school and that she turn in weekly school logs. School boards are not bound to follow the recommendation of a circuit court judge in a probation proceeding. Furthermore, after reviewing the circuit court order, it appears that that the judge ordered “if the juvenile returns to school . . .” “the parents shall check in with school weekly, to monitor school attendance, homework and behavior” (emphasis added). The judge did not order that the pupil be allowed back in school. Therefore, no procedural violation was committed regarding this allegation.

Furthermore, 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. In reviewing this case, I do not see an extraordinary circumstance or a procedural violation that cause me to modify the pupil's expulsion period.

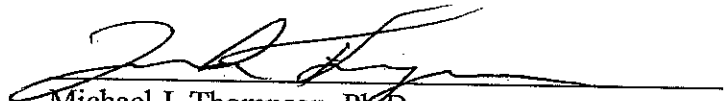
**CONCLUSIONS OF LAW**

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 M P by the Racine Unified School District Board of Education is affirmed.

Dated this 14<sup>th</sup> day of June, 2011

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