

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A S</p> <p>by Campbellsport School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 11-EX-11</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 Campbellsport School District Board of Education to expel the above-named pupil from the Campbellsport School District. This appeal was filed by the pupil and received by the Department of Public Instruction on July 25, 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 June 14, 2011, from the district administrator of the Campbellsport School District. The letter advised a hearing

would be held on June 27, 2011 that could result in the pupil's expulsion from the Campbellsport School District through his 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 or about June 3, 2011, while at school and while under the supervision of a school authority, the pupil was under the influence of marijuana while in attendance at school.

The hearing was held in closed session on June 27, 2011. 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 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 July 5, 2011, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the pupil's 21st birthday with the opportunity for early reinstatement. Minutes of the school board expulsion hearing, a recording 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's attorney claims that the pupil was unable to adequately prepare for the expulsion hearing because the pupil and his family were not afforded sufficient time to obtain counsel. While state statute section 120.13(1)(c)4.e requires the school board to inform the pupil and the pupil's parents that

they may be represented by counsel at the hearing, it does not require that the school district, or any other entity, provide counsel to the pupil or his parents. The June 14, 2011 notice of expulsion hearing did inform the pupil and his parents of their right to obtain counsel. At no time did the parents or pupil request an adjournment to obtain legal counsel. Therefore, there was no procedural error.

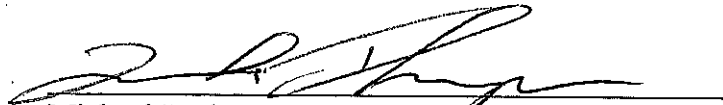
CONCLUSIONS OF LAW

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 A S by the Campbellsport School District Board of Education is affirmed.

Dated this 21st day of September, 2011



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