

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>G. S.</p> <p>by Racine Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 11-EX-12</p>
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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stat. § 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 September 12, 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 May 31, 2011, from an assistant principal of the Racine Unified School District. The letter advised a hearing

would be held on June 8, 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 his parents via first-class mail. The letter alleged that the pupil repeatedly refused or neglected to obey the rules and that the pupil engaged in conduct while not at school or while not under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil committed a crime of forced entry to Starbuck Middle School on the evening of May 21, 2011 which resulted in broken windows, stolen computer keyboards, and vandalism to a classroom by pouring paint onto tables and floors. Police were called and the pupil was arrested. In addition, the district alleged that the pupil is guilty of repeated refusal and neglect to obey school rules for the 2010-11 school year and has accumulated thirty-three (33) behavior referrals.

The hearing was held before an independent hearing officer on June 8, 2011. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the hearing officer deliberated in closed session and found that the pupil committed the vandalism as described in the notice of expulsion hearing. The hearing officer made no findings related to the allegation of repeated violation of rules as described in the notice of expulsion hearing. The hearing officer concluded 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. He 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 June 8, 2011, was mailed separately to the pupil and his parents. The order stated that the pupil was expelled through the end of the 2011-12 school year. The school board reviewed the independent hearing officer's order on June 20, 2011 and approved it. The pupil and his parents were advised by letter dated June 21, 2011 of the board's decision. 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 one issue which requires consideration. The pupil's mother explains that she has not been able to find alternative education for the pupil. During the period of expulsion from a Wisconsin public school under § 120.13(1)(c) or 119.25, the pupil's **right** to a public education pursuant to the Wisconsin Constitution is suspended. A school district has the discretion to offer alternative education. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Matt L. v. Merrill Area Public School District Board of Education*, Decision and Order No. 381 (May 19, 1999); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986). School districts have authority to refuse to accept any student during the term of an expulsion from another school district, § 120.13(1)(f). Thus, while a pupil may have difficulty enrolling in another school, it is not a basis for reversing this expulsion.

However, after reviewing the record in this case, I find that the school district did not follow all of the procedural requirements pertaining to an expulsion. Wisconsin Stat. § 120.13(1)(c) 4. requires the board to provide the particulars of the alleged misconduct as well as the grounds for expulsion.

120.13 School Board Powers.

(1) (c) 4. Not less than 5 days written notice of the hearing...shall be sent...The notice shall state all of the following:

a. **The specific grounds under subd. 1., 2. or 2m** and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

The notice of expulsion hearing stated that the grounds for the expulsion recommendation was repeated violation of rules and that the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority. However, the findings by the hearing officer reflect only a finding that the pupil engaged in conduct at school that endangered the property, health, or safety of others at school.

The statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 21, 1993) and *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, (May 17, 1991). 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 statute's requirements renders the expulsion void. Even where a pupil unequivocally admits misconduct that is the ground for expulsion, the failure to provide the mandated, advance statutory notice calls for reversal. See *Nick N. v. Elcho School District Board of Education*, Decision and Order No. 373 (December 4, 1998); *Justin E. v. Antigo School District Board of Education*, Decision and Order No. 329 (July 24, 1997); *Ryan G. v. Sparta Area School District*, Decision and Order No. 325 (May 19, 1997); *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178 (May 17, 1991); *Christopher K. v. West Allis School District*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District*, Decision and Order No. 143 (July 2, 1986).

Because the notice of expulsion and the findings of fact and conclusions of law are not based upon at least one common statutory ground, the expulsion must be reversed. See *Melissa R. v. Westfield School District Board of Education*, Decision and Order No. 479 (September 10, 2002); *Sabrina T. v. Menominee Indian School District Board of Education*, Decision and Order No. 468 (May 29, 2002); and *Travis M. v. Deerfield Community School District Board of Education*, Decision and Order No. 423 (September 25, 2000). 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.

If the district chooses, it may remedy this error 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).

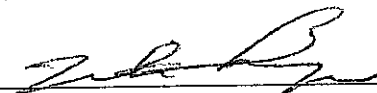
CONCLUSIONS OF LAW

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 G S by the Racine Unified School District Board of Education is reversed.

Dated this 9th day of November, 2011



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