

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Z: . . . L . . . by Janesville School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 12-EX-02</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 Janesville School District Board of Education to expel the above-named pupil from the Janesville School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 13, 2012.

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 18, 2011, from the district administrator of the Janesville School District. The letter advised that a

hearing would be held on November 3, 2011 that could result in the pupil's expulsion from the Janesville School District through the pupil's 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 October 13, 2011, the pupil engaged in a sexual assault on school grounds at Edison Middle School.

The hearing was held in closed session on November 3, 2011. The pupil and his parent 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 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 November 3, 2011, was mailed separately to the pupil and his parent. The order stated that the pupil was expelled through the 2012-2013 school year, including 2013 summer school. The record includes exhibits introduced at the hearing and an audio recording of the hearing.

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 two issues which require consideration. First, in the appeal, the pupil's attorney claims that because the pupil was not enrolled in the district at the time of the expulsion hearing, the school district did not have jurisdiction to expel the pupil. The record in this case includes an October 18, 2011 Notice of Expulsion Hearing indicating that an expulsion hearing would be held on November 3, 2011. The Notice accused the pupil of engaging in sexual assault while on school grounds on October 13, 2011. The appeal letter filed by the pupil's attorney states that on November 1, 2011, a Judge ordered that the pupil's foster placement be moved closer to his mother's home in Dane County as part of a plan for family

reunification and that on November 2, 2011, a Dane County social worker withdrew the pupil from the Janesville School District, in compliance with the Judge's November 1, 2011 order. The Janesville School District was informed of the Judge's Order but still conducted the November 3, 2011 expulsion hearing and expelled the pupil.

In essence, the pupil's attorney claims that the Janesville School District violated the pupil's constitutional due process rights when it expelled him from the district after the pupil withdrew from the district. However, the act of withdrawing the pupil does not negate the Janesville School District's authority to take action for conduct that occurred while the pupil was still enrolled in the district. "It is the policy of the State of Wisconsin that students cannot drop-out and re-enroll in school at whim." *Bradley B. v. Spooner School District*, Decision and Order No. 107 (February 15, 1983), cited in *Alexander P. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 372 (November 23, 1998). There is no dispute that the pupil was enrolled in the Janesville School District when he committed the misconduct at issue. Therefore, the school board did not lose authority to expel the pupil even though he withdrew from the district prior to the expulsion hearing. Ultimately, a student can withdraw from public school as long as he or she is enrolled in a different public school, a private school or is being home schooled. The district, however, may forge ahead with the expulsion.

The second issue raised by the pupil's attorney is that Wisconsin's expulsion statute cannot reasonably be interpreted to permit the Janesville School District to expel the pupil given the circumstances at the time of the expulsion hearing. The appeal goes on to describe that because the pupil was not enrolled as a student in that district at the time of the expulsion hearing the interests of the school did not demand the pupil's expulsion, as required by Wis. Stat. § 120.13(1)(c)(1). As stated previously, while the pupil was not enrolled in the district at the time

of the expulsion hearing, the pupil was enrolled in the district at the time of the alleged misconduct. Moreover, there might come a time when the pupil or his parents wish to re-enroll in the district. The board has wide discretion in determining whether the interests of the school demand expulsion. Furthermore, previous decisions of the department have held that conduct which endangers the health or safety of another student, in the absence of mitigating circumstances, is more than sufficient to establish that the interest of the school demands the pupil's expulsion. See *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Kristin P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185 (February 21, 1992); *John B. V. Milwaukee Public School District Board of Education*, Decision and Order No. 115 (October 31, 1983). In this case, the record contains no mitigating factors. I therefore uphold the school board's findings on this issue.

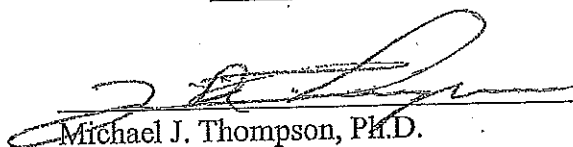
CONCLUSIONS OF LAW

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 Z I . . . by the Janesville School District Board of Education is affirmed.

Dated this 4th day of April, 2012


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