

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

T O

by Birchwood School District
Board of Education

DECISION AND ORDER

Appeal No.: 12-EX-07

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 Birchwood School District Board of Education to expel the above-named pupil from the Birchwood School District. This appeal was filed by the pupil and received by the Department of Public Instruction on August 17, 2012.

In accordance with the provisions of Wis. Admin. 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 21, 2012, from the district administrator of the Birchwood School District. The letter advised that a

hearing would be held on May 29, 2012 that could result in the pupil's expulsion from the Birchwood School District through a period of time to be determined by the school board. 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 while under the supervision of school authority which endangered the property, health, or safety of others 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. The letter specifically alleged that while on a school-sponsored field trip to the Shell Eco-Marathon High Mileage Vehicle competition in Houston, Texas between March 29th and April 2, 2012, the pupil was in possession of and smoked marijuana and was in possession of drug paraphernalia.

The hearing was held in closed session on May 29, 2012. 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 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 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. 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 June 18, 2012, 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. 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 filed by the pupil's mother raises three issues which require consideration. First, the appeal alleges that the pupil was left unsupervised at the school-sponsored event. While this may be the case, it is not a procedural violation on the school district's part. The pupil admitted to being in possession of drug paraphernalia and smoking marijuana while on a school-sponsored field trip. Therefore, although the pupil may or may not have been unsupervised, it is not relevant to this appeal.

Second, the appeal raises concerns regarding Birchwood School, alleging that the school did not enforce court orders and the appeal also discusses communication issues with the district administrator. Because neither of these concerns is pertinent to the appeal at issue, they will not be considered in this decision.

Third, the appeal raises questions about the adequacy of the district's procedures regarding special education. 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). Therefore, 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.

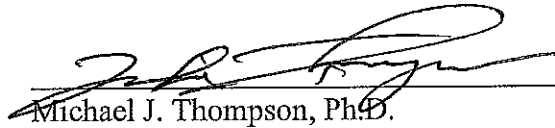
CONCLUSIONS OF LAW

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 Wis. Stat. § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T O by the Birchwood School District Board of Education is affirmed.

Dated this 9th day of October, 2012



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

