

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>A D</p> <p>by Pepin Area School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 12-EX-08</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 Pepin Area School District Board of Education to expel the above-named pupil from the Pepin Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on October 1, 2012.

In accordance with the provisions of Wis. Admin. Code Ch. 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 Wis. Stat. § 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 September 5, 2012, from the district administrator of the Pepin Area School District. The letter advised that a hearing would be held on September 12, 2012 that could result in the pupil's expulsion from the Pepin Area School District through his 21st birthday. Due to the pupil's father requesting that the hearing be rescheduled, on September 10, 2012, the district administrator sent another "Notice of Expulsion" rescheduling the hearing from September 12, 2012 to September 18, 2012. The letter also indicated that the hearing could result in the pupil's expulsion from the Pepin Area 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 not at school or while not under the supervision of 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 on May 6, 2012, the pupil delivered illegal drugs (marijuana), to a student enrolled in Pepin Area School, which were delivered on school grounds to a different student on May 30, 2012.

The hearing was held in closed session on September 18, 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 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 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 September 24, 2012, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through his 21st birthday. 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 Wis. Stat. § 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, filed by the pupil's grandmother, challenges the sufficiency of the evidence, alleging that the school board did not have enough evidence to expel the pupil. Specifically, the appeal claims that at the expulsion hearing, a student who attends the school appeared via phone conference and admitted to the school board that the pupil at issue did not deliver the marijuana. In addition, the appeal states that the pupil was with his accuser for too short a period of time on the day of the alleged marijuana transaction that he would not have had time to give the student marijuana.

The board was in the best position to resolve this conflict in testimony. In regards to the above complaint, it was within the board's discretion to give weight to the evidence and arguments, as it 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).

The appeal also alleges that the school board relied entirely upon hearsay when expelling the pupil. Hearsay is admissible in expulsion hearings and may be relied upon by school boards. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 668, 321 N.W. 2d 334 (1982); *Timothy W. v. Greenfield School District Board of Education*, Decision and Order No. 315 (March 21, 1997); *Christopher W. v. Tomah Area School District Board of Education*, Decision

and Order No. 247 (April 21, 1995); *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *X. L. v. Clayton School District Board of Education*, Decision & Order No. 600 (June 29, 2007); *C. M. v. Kenosha School District Board of Education*, Decision & Order No. 616 (April 17, 2008). The State Superintendent has repeatedly found that a school board is permitted to consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education*, Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

Also, the appeal complains about disparity of treatment, alleging that other students involved in the same act of misconduct were allowed to return to school during the 2012-2013 school year, while the pupil at issue was expelled until age 21. However, because expulsions are considered on a case-by-case basis, the treatment of other students is not relevant to this review. See *Aron P. v. Sturgeon Bay School District Board of Education*, Decision and Order No. 341 (December 17, 1997); *Nathaniel S. v. Wausau School District Board of Education*, Decision and Order No. 350 (March 25, 1998); and *Leo P. v. Whitewater School District Board of Education*, Decision and Order No. 351 (March 31, 1998); *D. M. v. Milwaukee Public School District Board of Education*, Decision & Order No. 680 (April 8, 2011); *N. H. v. Germantown School District Board of Education*, Decision & Order No. 681 (May 2, 2011).

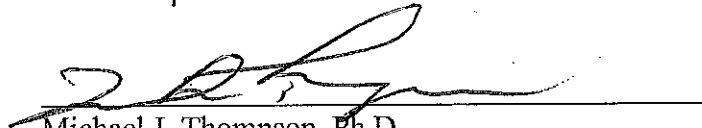
CONCLUSIONS OF LAW

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 A. D. by the Pepin Area School District Board of Education is affirmed.

Dated this 12th day of November, 2012



Michael J. Thompson, Ph.D.

Deputy State Superintendent of Public Instruction