

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Daniel O [REDACTED]</p> <p>by Kenosha Unified School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 13-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. Stat. § 120.13(1)(c) from the order of the Kenosha Unified School District Board of Education to expel the above-named pupil from the Kenosha Unified School District. This appeal was filed by the pupil and received by the Department of Public Instruction on April 22, 2013.

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 February 6, 2013, from the Chairman of Administrative Review Committee of the Kenosha Unified School District. The letter advised that a hearing would be held on February 13, 2013, which could result in the pupil's expulsion from the Kenosha Unified School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and 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 references and attaches an exhibit alleging that the pupil engaged in 52 acts of misconduct while at school between April 13, 2011, and January 22, 2013. Each allegation of misconduct is detailed with a description of misconduct, date of the misconduct, and where the misconduct occurred.

The hearing was held in closed session on February 13, 2013 before an independent hearing officer. The pupil, his mother, and his grandmother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother and grandmother 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 did repeatedly refuse or neglect to obey school rules and 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 February 14, 2013, was mailed separately to

the pupil and his mother. The order stated the pupil was expelled through the first semester of the 2013-2014 school year and that the pupil had the option to enroll in the Hillcrest Bridges Program. The school board reviewed the independent hearing officer's order on February 28, 2013, and modified the expulsion order. Specifically, the school board extended the length of the expulsion order through the end of the 2014-2015 school year and removed the option for the Hillcrest Bridges Program. The pupil and his mother were advised by letter dated March 6, 2013 of the board's decision. 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 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 Wis. Stat. § 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 that 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. In the appeal, the pupil's mother claims that the pupil has Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder. 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-spedtopics.html>. Or, the pupil or his parents may call the special education team at the Department of Public Instruction to get more information.

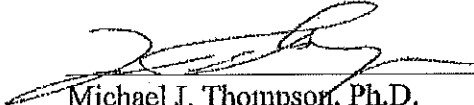
**CONCLUSIONS OF LAW**

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 Daniel O [REDACTED] by the Kenosha Unified School District Board of Education is affirmed.

Dated this 4<sup>th</sup> day of June, 2013

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

**APPEAL RIGHTS**

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

PARTIES TO THIS APPEAL ARE:



Michele Hancock  
District Administrator  
Kenosha Unified School District  
3600 52nd St.  
Kenosha, WI 53144-2664

COPIES MAILED TO:



Michele Hancock  
District Administrator  
Kenosha Unified School District  
3600 52nd St.  
Kenosha, WI 53144-2664