

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

T ■■■ H ■■■

by Elmbrook School District
Board of Education

DECISION AND ORDER

Appeal No.: 13-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 Elmbrook School District Board of Education to expel the above-named pupil from the Elmbrook School District. This appeal was filed by the pupil and received by the Department of Public Instruction on 11/12/2013.

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 dated September 20, 2013, from the Assistant Superintendent for Educational Services, Dana Monogue, of the Elmbrook School District. The letter advised that a hearing would be held on September 25, 2013, that could result in the pupil's expulsion from the Elmbrook School District. The period of expulsion contemplated is not listed. 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 September 16, 2013, [REDACTED] vandalized a bus seat while on a band field trip, had repeatedly refused to follow school rules and has violated his Behavioral Contract signed February 8, 2013.

The hearing was held in closed session on September 25, 2013. 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. 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 October 2, 2013, 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 a transcript of 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 three issues which require consideration.

- I. The Expulsion is Unfair.

██████████ in her appeal letter and brief states that the outcome of the hearing, expulsion, is unfair. As stated above and by the School District in its brief, the power granted to the state superintendent by statute, namely Wis. Stat. § 120.13(1)(c), limits review of the appeal to whether or not the statutory procedures were followed. Whether or not the outcome is just is not under the scope of the superintendent's review. Further, whether or not the evidence supported the findings is the purview of the School Board alone. For example, the state superintendent has held in prior decisions that the state superintendent will not review whether an expulsion is excessively harsh. *Kelly B. by the School Dist. of Three Lakes*, (100) Aug. 23, 1982; *Brad O. by the Madison Metropolitan School Dist.*, (246) Mar. 16, 1995. Rather, the state superintendent's review is primarily limited to ensuring that the procedural requirements of Wis. Stat. § 120.13(1)(c) are complied with. *Alec J. by the Hartford Jt. #1 School Dist.*, (405) Jan. 3, 2000; *Laura S. by the Viroqua Area School Dist.*, (410) March 31, 2000; *J.B. by the Milwaukee School Dist.*, (566) Feb. 16, 2006. As such, school boards are afforded wide latitude in determining whether an expulsion is an appropriate response to alleged conduct.

Here, the School Board found that evidence existed that T██████ H██████ did engage in behavior that endangered the property, health, or safety of others and continued to fail to comply with school district rules which violates Wis. Stat. § 120.13(1)(b)2.(a) and (c). T██████ by his own admission, did engage in vandalism. Although the extent of that participation is disputed, T██████ admitted to violating school district rules. Further, he was on a "Behavioral Contract" which was a deferred expulsion agreement. T██████ was well aware by entering into this contract and again by signing an extension that he had to refrain from disciplinary infractions or he would be subject to expulsion. It is not in the superintendent's power to second guess the findings of the school board.

II. The length of expulsion is extreme and unconstitutional.

The length of the expulsion is also within the discretion of the school board. *Ricardo S. by the School Dist. Of Wisconsin Rapids*, (145) Sept. 5, 1986; *Lavell A. by the Kenosha Unified School Dist.* (147) Jan. 12, 1987. The superintendent is foreclosed from reviewing whether the period assessed for expulsion is excessive or unduly harsh. *James M. B. by the Westosha School Dist.* (101) Dec. 22, 1982; *Kelly B. By the School Dist. Of Three Lakes*, (100) Aug. 23, 1982. There is no provision in Wis. Stat. § 450.13(1)(c) which limits the duration of an expulsion. *Jesse K. by the School Bd. Of Joint Dist. No. 2 of Sun Prairie (and others)*, (131) June 17, 1985; *Rebecca S. by the Janesville School Dist.*, (248) May 8, 1995.

III. The Expulsion Order also prohibits T [REDACTED] H [REDACTED] from attending School District sponsored events.

Again, it is not in the superintendent's purview to review any additional provisions of the expulsion as long as the proper procedures were followed. The Board is authorized to combine lesser discipline such as exclusion from co-curricular activities for a specified period. This deprives the pupil of a privilege and not a right. *Troy Y. by the Burlington Area School Dist.*, (309) Jan. 21 1997; *Danielle A. W. by the Baron Area School Dist.*, (310) Jan. 31, 1997.

In addition to the three issues raised in the appeal letter, [REDACTED] also states that the outcome of this expulsion has had a negative impact on T [REDACTED] health and education. While this is concerning and unfortunate, this is not a matter for the superintendent to consider as the power is limited to a review of the procedure. However, the School District did not undertake expulsion lightly. The fact that T [REDACTED] received a deferred expulsion on two previous occasions

through the Behavioral Contract and its extension demonstrates this. The character references and items raised by T [REDACTED] in his letter were items that should have been more properly brought up at the time of the hearing.

In reviewing the record in this case, I find the school district complied with all of the procedural requisites. Further, no assertion has been made to the contrary. I, therefore, affirm this expulsion.


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 with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of T [REDACTED] H [REDACTED] by the Elmbrook School District Board of Education is affirmed.

Dated this 13th day of January, 2014


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

Parties to this appeal are:



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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.

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