

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>R [REDACTED] M [REDACTED]</p> <p>by Oak Creek-Franklin Joint School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 13-EX-09</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 Oak Creek-Franklin Joint School District Board of Education to expel the above-named pupil from the Oak Creek-Franklin Joint School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 5, 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 an expulsion hearing notice, dated October 31, 2013, from the district administrator of the Oak Creek-Franklin Joint School District. The letter advised that a hearing would be held on November 6, 2013 that could result in the pupil's expulsion from the Oak Creek-Franklin Joint School District through to the pupil's 21st birthday. The letter was hand delivered to the pupil's mother. A separate notice was not sent to the pupil. 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 also alleged that the pupil repeatedly refused to or neglected to obey school rules. The letter specifically alleged that the pupil threatened a school officer and administrator on October 23, 2013, and violated numerous school rules and policies over an extended period of time.

Due to the pupil's hospitalization, the hearing was postponed. A revised notice was not issued to the pupil and the pupil's parents. The hearing was held in closed session on November 13, 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 and that the pupil repeatedly refused or neglected to obey school rules. 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 November 25, 2013, was mailed separately to

the pupil and his parents. The order stated the pupil was expelled through to the pupil's 21st birthday. Due to a technical error, the school district was unable to provide an audio recording or transcript of the hearing. However, detailed minutes 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 state superintendent must 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. *Madison Metropolitan School District v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

In the appeal letter, the pupil's father (hereinafter "appellant") alleges that the school district should have evaluated the pupil under Section 504 of the Rehabilitation Act and the Individuals with Disabilities Education Act. The state superintendent has consistently held that an expulsion appeal is not the appropriate context within which to challenge the district's application of special education provisions to a particular pupil. *See e.g. Benjamin L. by the Maple School Dist.*, (214) Dec. 28, 1993; *Brad M. V. by the Boyceville Community School Dist.*, (233) June 29, 1994. Therefore, the appellant's allegations are not grounds to overturn the

expulsion order. However, I am referring this matter to the department's Special Education Team for review.

Having received the appeal, the state superintendent is still obligated to review the record of the expulsion proceeding for compliance with Wis. Stat. § 120.13(c). *David N. by the Milton School Dist.*, (475) July 26, 2002; *T.D. by the Menasha Joint School Dist.*, (708) Dec. 12, 2013. After reviewing the entire record, it is apparent that the school district failed to comply with the notification requirements of Wis. Stat. § 120.13(1)(c)4. As a result, the expulsion order must be overturned.

Section 120.13(1)(c)4 of the Wisconsin Statutes states, in part, "...notice of the hearing under subd. 3. shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian..." (Emphasis added) This requires that a notice be sent to the pupil and, if the pupil is a minor, a separate notice be sent to the pupil's parent or guardian. *Michelle R. by the Suring Pub. School Dist.*, (126) Mar. 7, 1985; *Michael S. by the Milwaukee Public School Board*, (128) May 10, 1985. For example, sending two copies of the notice of expulsion hearing in one envelope is inadequate. *Raymond K. by the Phillips School Dist.*, (435) June 25, 2001; *Ryan S. by Pewaukee School Dist.*, (445) Sept. 25, 2001. Failure to comply with this requirement requires reversal even though the pupil and his parents appeared at the expulsion hearing. *R.H. by the Webster School Dist.*, (624) June 13, 2008.

In the school district's letter to the state superintendent, dated December 10, 2013, the school district states, "The letters were provided to [the pupil's mother] by hand." The record contains an acknowledgement form, signed by the pupil's mother, which states, "Please confirm receipt of letter [sic] reflecting [the pupil's] expulsion hearing before the Board on Wednesday, November 6, 2013, at 6:30 p.m." The pupil did not sign the form. While the record clearly

demonstrates that notice was given to the pupil's mother, there is no evidence in the record that a notice was sent separately to the pupil. Therefore, the school district failed to comply Wis. Stat. § 120.13(1)(c)4.

Section 120.13(1)(c)4.b. provides that expulsion notices must state the time and place of the hearing. The notice stated that the expulsion hearing would be held on November 6, 2013. Due to the pupil's hospitalization, the hearing was postponed until November 13, 2013. However, the school district did not send out a new notice informing the pupil and the pupil's parents of the date and place of the rescheduled hearing. Therefore, the school district failed to comply with Wis. Stat. § 120.13(1)(c)4.b.

In reviewing the record in this case, I find the school district did not comply with with all of the procedural requisites. Therefore, I overturn this expulsion.

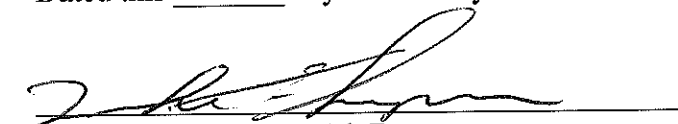
### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with with all of the procedural requirements of §120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of R [REDACTED] M [REDACTED] by the Oak Creek-Franklin Joint School District Board of Education is overturned.

Dated this 30<sup>th</sup> day of January 2014

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

Parties to this appeal are:



Sara Burmeister  
District Administrator  
Oak Creek-Franklin Joint School District  
7630 S 10th St  
Oak Creek, WI 53154-1912

## **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.

COPIES MAILED TO:



Sara Burmeister  
District Administrator  
Oak Creek-Franklin Joint School District  
7630 S 10th St  
Oak Creek, WI 53154-1912