

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of B ■ T ■ ■ ■ ■ ■ ■ ■ ■ by East Troy Community School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 13-EX-10</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 East Troy Community School District Board of Education to expel the above-named pupil from the East Troy Community School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 9, 2013.

In accordance with the provisions of Wis. Adm. 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 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 "Amended Notice of Expulsion Hearing," dated November 12, 2013, from the district administrator of the East Troy Community School District. The letter advised that a hearing would be held on November 18, 2013 that could result in the pupil's expulsion from the East Troy Community School District through until 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 at school or under the supervision of school authority which endangered the property, health, or safety of others. The letter specifically alleged that the pupil was in possession of, used, and was under the influence of, a prescription drug not prescribed for him on school premises during school hours.

The hearing was held in closed session on November 18, 2013. The pupil and his father appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his father 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 November 25, 2013, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through until second semester of 2014-2015 school year. The pupil was given the opportunity for early readmittance pursuant to meeting some conditions and readmittance to an alternative

learning program. Minutes of the school board expulsion hearing and an audio recording of the expulsion 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).

The appeal letter in this case raises one issue which requires consideration. The school district has established its own disciplinary guidelines and procedures which it has published and is, presumably, available to its students. These guidelines are detailed in how disciplinary infractions will be handled. The pupil's father argues that the East Troy Community School District (District) failed to follow its own rules. The state superintendent agrees.

In the school year 2011-2012, the pupil was found to have been under the influence on school grounds. He attended a pre-expulsion meeting, which is not contemplated under the District's guidelines nor is expulsion contemplated for such conduct. In the instant case, where

the pupil was found to have violated the guideline on Drug Use and Possession, the guideline states that a pre-expulsion conference will be held with the student and his or her parent(s) to determine which of four options will be implemented. Two of these options allow the pupil to remain in school pursuant to receiving some sort of treatment or support. The other two contemplate expulsion, thus making a "pre-expulsion meeting" a meaningful meeting. In the present matter, the District did not hold a pre-expulsion meeting, did not discuss other options with the student or parent and, as a result, failed to follow its own guidelines.

While the state superintendent does not have the power to review a prehearing meeting itself and there is no legal requirement to address behaviors prior to expulsion (see *Nathan H. by the Westbend School Dist.*, (342) January 13, 1998), the state superintendent has reversed an expulsion order in which the school board failed to establish evidence in the record that the board complied with its own specific policies and procedures adopted as an interpretation of Wis. Stat. § 120.13(1)(c). *Robert D., Jr. by the School Dist. Of Crandon*, (138) May 21, 1986 (pp. 7-11). Wis. Stat. § 120.13(1)(c) sets forth procedures to expel a student. The ability of the state superintendent to hear appeals of expulsions rests in the necessity of making sure the pupil has due process. Where the District has adopted further due process guidelines and has violated them, the pupil cannot be said to have had due process.

However, in this case, the administration, the pupil, and his father did have a pre-expulsion meeting on May 15, 2012. This was not a necessary meeting, but was also not prohibited. At that meeting, the student and his parent each signed an agreement that stated in part that "At this meeting all parties are made aware that [the pupil] is at a pre-expulsion level. ANY future incidents that would be in violation of the Drug/Alcohol/Inhalant Policy will result in a disciplinary hearing in front of the Board of Education wherein expulsion could result."

There is no evidence that this agreement was not entered into knowingly and willingly. This agreement was, in effect, a waiver of the procedural guidelines of the District. When a pupil signs a written stipulation that any future incidents will be referred for expulsion, the pupil cannot later complain that a pre-expulsion meeting or other options were not given.. For example, the state superintendent has held that it is possible to waive the statutorily required hearing, therefore it is possible to waive a non-statutory pre-expulsion meeting. See Curtis B. by the Marinette School Dist., (519) June 25, 2004.

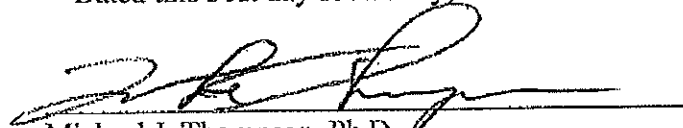
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of §120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of B [REDACTED] T [REDACTED] by the East Troy Community School District Board of Education is affirmed.

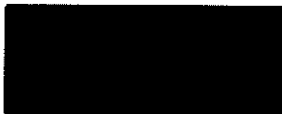
Dated this 31st day of January, 2014


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:



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