

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

T ■■■ J ■■■■

by Menasha Joint School District
Board of Education

DECISION AND ORDER

Appeal No.: 13-EX-14

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 Menasha Joint School District Board of Education to expel the above-named pupil from the Menasha Joint School District. This appeal was filed by the pupil and received by the Department of Public Instruction on December 16, 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 November 7, 2013, from the district administrator of the Menasha Joint School District. The letter advised that a hearing would be held on November 13, 2013 at 7:30 pm that could result in the pupil's expulsion from the Menasha Joint School District through the pupil's 21st birthday. Copies of the letter were mailed to the pupil and her parents. The pupil's mother returned two signed certificates of service, dated November 8, 2013, to the Menasha Joint School District. 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, of a school authority, or of a school district employee or school board member. Specifically, the letter alleged that the pupil ingested the prescription medication of another while in the school hallway. The letter also alleged that the pupil engaged in repeated refusal or neglect to obey school rules as evidenced by a disciplinary record dated from November 12, 2010, through October 22, 2013.

The hearing was held in closed session on November 13, 2013. The pupil and her mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations. The pupil and her mother did not contest any of the facts presented by the school district administration.

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, of a school authority, or of a school district employee or school board member. The board found that the pupil's conduct

showed a repeated refusal or neglect 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 her parents. The order stated the pupil was expelled through the end of the 2014-15 school year. Minutes and a digital recording of the expulsion hearing are part of the record. Neither the pupil's parents nor the school district, by its attorney, submitted briefs to the state superintendent.

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 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 mother ("appellant") raises several issues which require consideration. First, the appellant states that her daughter is barred from attending any public school in the state of Wisconsin, including publicly funded online school. The appellant argues that the school board is preventing her daughter from receiving any education. First, Wis. Stat. §

120.13 is an exception to the constitutional right to education under Article X, § 3 of the Wisconsin Constitution. *Susan Marie H. by the Kenosha Unified School Dist.*, (157) June 28, 1988 (p. 9). Due process is satisfied as long as the school board complies with the procedural requirements described in § 120.13(1)(c). Second, nothing prevents a pupil from attempting to enroll in a private school or another public school at his or her own expense, or he or she can be homeschooled. *B. W. by the Black River Falls School Dist.*, (542) May 26, 2005. However, school districts may refuse to accept any student during the term of an expulsion from another school district. Wis. Stat. §120.13(1)(f)(1) (2011-12); *C. M. by the Kenosha School Dist.*, (616) April 17, 2008.

Second, the appellant argues that the school first said it would not recommend expulsion if she arranged an AODA assessment for the pupil, but then reversed its decision. The appellant contends that the pupil has had an AODA assessment in compliance with the school's requirements. However, there is nothing in the record to indicate the existence of an agreement between the appellant and the school. Furthermore, the superintendent has long discouraged this type of verbal agreement. The school has the authority to recommend expulsion in compliance with the statutory grounds and procedural requirements of Wis. Stat. § 120.13(1)(c).

Third, the appellant alleges that the school failed to inform her of the many disciplinary issues cited in the record as grounds for expulsion. However, whether the appellant was aware of the issues fails to negate the fact that the pupil was notified that her conduct was unacceptable through the use of suspensions and detentions. Furthermore, there is no legal requirement that the school address specific behaviors before initiating the expulsion process unless the pupil is identified with an exceptional educational need or disability. *Nathan H. by the Westbend School*

Dist., (342) January 13, 1998. As stated in the record, the pupil in this case does not have an exceptional educational need or disability.

Finally, the appellant argues that expulsion is an unfair result because other students involved in the incident on October 22, 2013 were not expelled. However, the decision to expel a pupil is left to the discretion of the school board, as long as it acts within the parameters of Wis. Stat. § 120.13(1)(c). *Ricardo S. by the School Dist. of Wisconsin Rapids*, (145) Sept. 5, 1986 (p.8). Furthermore, expulsions are considered on a case by cases basis and the treatment of other students is not relevant. *Nicole R. by Arcadia School Dist.*, (480) Nov. 20, 2002.

In reviewing the record in this case, I find the school district complied with all the procedural requisites. I, therefore, affirm this expulsion.

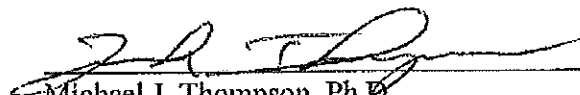
CONCLUSIONS OF LAW

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

ORDER

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

Dated this _____ day of February 2014

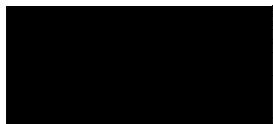


Michael J. Thompson, Ph.D.
Deputy State Superintendent of Public Instruction

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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