

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

K [REDACTED] F [REDACTED]

by Wisconsin Rapids Public Schools School
District
Board of Education

DECISION AND ORDER

Appeal No.: 17-EX-01

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Wisconsin Rapids Public Schools School District Board of Education to expel the above-named pupil from the Wisconsin Rapids Public Schools School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 9, 2017.

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 § 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 Pupil Expulsion Hearing," dated January 13, 2017, from the district administrator of the Wisconsin Rapids Public Schools School District. The letter advised that a hearing would be held on January 30, 2017 that could result in the pupil's expulsion from the Wisconsin Rapids Public Schools School District through pupil's 21st birthday. The letter was sent separately to the pupil and her 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 January 9, 2017, the pupil admitted to selling one gram of marijuana to another student for \$20.00 at Lincoln High School and that she had previously sold marijuana to another student. A search of her locker revealed more marijuana and a substantial amount of cash.

The hearing was held in closed session on January 30, 2017. The pupil and her parents appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 February 1, 2017, was mailed separately to the pupil and her parents as well as hand delivered to her step-

father. The order stated the pupil was expelled through through the 2017-18 school year.
Minutes of the school board expulsion hearing and an audio recording of the expulsion hearing.

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 one issue which requires consideration. The basic argument of the pupil is that the outcome and the hearing was unfair. Unfortunately this is outside the scope of the State Superintendent's review. The pupil has alleged no violations of procedure. It has long been established that school board is the trier of fact and the decision to expel a pupil and the length of expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements of Wis. Stat. § 120.13. *James A. by the Milwaukee Public School Dist.* (426) Nov. 6, 2000 and *Lavell A. by the Kenosha Unified School Dist.* (147) Jan. 12, 1987. Because expulsions are considered on a case by case basis, allegations of different treatment of other pupils are not relevant. *Benjamin Z. by the Marinette School Dist.* (507) March 1, 2004.

All procedural requirements of Wis. Stat. § 120.13(1) have been complied with. The pupil and her parents were told of the time and date of the hearing and informed of their rights during the hearing. A review of the minutes supports that the hearing was conducted in accordance with the notice. The school board acted within its discretion to find that the pupil had endangered the property, health and safety of others while at school, and that it was in the best interests of the School to expel the pupil.

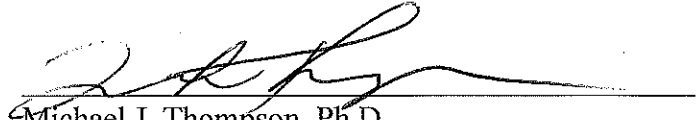
CONCLUSIONS OF LAW

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 K [REDACTED] F [REDACTED] by the Wisconsin Rapids Public Schools School District Board of Education is affirmed.

Dated this 24th day of March, 2017



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

APPEAL RIGHTS

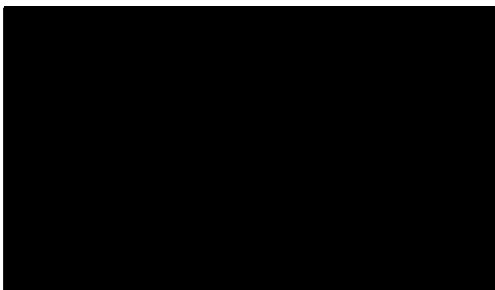
Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public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

Parties to this appeal are:



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