

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
ANITA P. [REDACTED]  
by the School District of Janesville  
Board of Education

DECISION  
AND  
ORDER  
84-EX-06  
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BASIS OF THE APPEAL

This matter is before the State Superintendent under §120.13 (1)(c), Wis. Stats., on appeal from the October 30, 1984 decision of the School Board (hereinafter Board) of the School District of Janesville (hereinafter School District) expelling the appellant, a student with exceptional educational needs (EEN), from the Janesville Craig High School for the remainder of the first semester of the 1984-85 school year. The appellant herein raises the following two issues for consideration:

First, the appellant asserts that the School District failed to determine whether or not a correlation existed between Anita's handicap and the alleged offense; and

Second, appellant asserts that Anita was expelled and placed on a homebound program without any M-team involvement, thereby making a change in placement which is contrary to law and which deprives Anita of appropriate educational services.

Now, having fully reviewed all matters of record, the State Superintendent makes the following:

FINDINGS OF FACT

1. On October 8, 1984, and based upon previous special education placements in the Milton and Beloit Memorial high schools, Anita P [REDACTED], as a transfer student, was referred for a suspected exceptional education need (EEN) as a child with an emotional disturbance (ED).
2. On October 8, 1984, and by her signature, Mrs. Mavis C [REDACTED], mother of Anita P [REDACTED], consented to an evaluation of her daughter (E.E.N. Form #2).
3. On October 17, 1984, Anita P [REDACTED] was involved in an incident which involved a quantity of marijuana on School District property and which resulted in her being charged with possession of marijuana by the Janesville Police Department.
4. On October 17, 1984, Mavis C [REDACTED] was notified that Anita P [REDACTED] would be suspended from the Janesville Craig High School for three (3) days.
5. By certified letter dated October 23, 1984, the School District notified both Mavis C [REDACTED] and Anita P [REDACTED] that an expulsion hearing would be held on October 30, 1984, and that Anita's suspension would be extended through that date.
6. In an invitation to an M-team meeting dated October 23, 1984, Mavis C [REDACTED] was notified of an M-team meeting to be held on October 24, 1984 (E.E.N. Form #3).
7. On October 24, 1984, an M-team meeting was conducted and an M-team Report of Findings was prepared (E.E.N. Form #4). There

- is no indication on the record that the M-team discussed or considered Anita P [REDACTED]'s behavior on October 17, 1984, or the pending expulsion hearing to be held on October 30, 1984.
8. An Individualized Education Program (IEP), IEP Conference Attendance (E.E.N. Form #7), Notice of Intent to Place (E.E.N. Form #8), and Placement Offer (E.E.N. Form #9) were all dated October 24, 1984.
  9. On October 29, 1984, Mavis C [REDACTED] signed a consent to place (E.E.N. Form #9) Anita P [REDACTED] in an ED program on a temporary basis "until a current evaluation can be completed" (E.E.N. Form #4).
  10. On October 30, 1984, Mavis C [REDACTED] signed a Permission to Obtain and Release Information (E.E.N. Form #11) which would allow the sharing of information for the purpose of establishing an appropriate educational program for Anita.
  11. On October 30, 1984, the Board met in closed session for the purpose of holding an expulsion hearing. Both Mavis C [REDACTED] and Anita P [REDACTED] were in attendance.
  12. As the minutes of the October 30, 1984 expulsion hearing indicate, "Kathy B [REDACTED] (Rock County Social Services) questioned whether or not the outcome of the placement evaluation would warrant an adjustment to the expulsion." No further consideration of this issue is indicated by the minutes.
  13. By certified letter dated October 31, 1984, both Mavis C [REDACTED] and Anita P [REDACTED] were notified of the decision of the Janesville

- Board of Education to expel Anita P [REDACTED] for the remainder of the first semester of the 1984-85 school year for endangering the health and safety of other students while at school and inasmuch as the interest of the school demanded her expulsion.
14. After Anita's expulsion the School District provided her with homebound instruction and continued special education placement evaluations for her.
  15. By letter dated November 16, 1984, Mavis C [REDACTED] appealed the decision of the Board to the State Superintendent of Public Instruction.
  16. On November 27, 1984, Robert L. K [REDACTED], Janesville School District social worker, interviewed Anita P [REDACTED] for the purpose of EEN evaluation. Mr. K [REDACTED] did not note having considered Anita's expulsion in terms of her special educational needs.

#### CONCLUSIONS OF LAW

School districts are limited purpose municipal corporations and have only those powers which are expressly provided for by statute or are necessarily implied thereby. Iverson v. Union Free High School District, 186 Wis. 342 (1925); also see generally Elroy-Kendall-Wilton District Schools v. CESA 12, 102 Wis. 2d 274 (Ct. App. 1981). The legislature has accorded school boards the power to expel students in accordance with Wis. Stat. §120.13(1)(c).

In Racine Unified School District v. Thompson, 107 Wis. 2d 657, 667, 321 N.W.2d 334 (Ct. App. 1982), the Wisconsin Court of Appeals

has stated that the State Superintendent's review of a board's expulsion hearing is intended to "insure that the school board followed the procedural mandates of subsection (c)." Having reviewed the record before me, I find that the School District has met the procedural requirements of Wis. Stat. §120.13(1)(c).

However, handicapped children are afforded additional procedural safeguards under the Education for All Handicapped Children Act (EAHCA), 20 U.S.C. §1401 et seq. In Blue v. New Haven Board of Education, 3 EHLR 552:401, 404 (D.C. Conn. 1981), the United States District Court of Connecticut stated in part as follows:

Among the numerous rights afforded handicapped children under the Act and the regulations are: (1) the right to remain in one's placement until the resolution of his special education complaint; (2) the right to have all changes in placement effectuated in accordance with prescribed procedures; (3) the right to an education in the least restrictive environment; and (4) the right to an appropriate public education.

These same rights have been identified and considered in other federal court decisions. See e.g., Stuart v. Nappi, 443 F. Supp. 1235 (1978), Doe v. Koger, 480 F. Supp. 225 (N.D. Indiana 1979), S-1 v. Turlington, 635 F.2d 342 (5 Cir. 1981), cert. denied 102 S. Ct. 566 (1981), Kaelin v. Grubbs, 4 EHLR 554:115 (6 Cir. 1982). Further, the courts have agreed that an expulsion constitutes a change of placement under EAHCA.

Anita P [REDACTED], as well as any handicapped student, is entitled to have all changes of placement made in accordance with the procedures set forth in EAHCA and Chapter 115, Wis. Stats. According to EAHCA, 20 U.S.C. §1415(e)(3), and its implementing regulations,

Section 300.513 does not permit a child's placement to be changed during a complaint proceeding, unless the parents and the agency agree otherwise. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others.

Similarly, Wis. Stat. §115.81(3) states that:

[A] change in program or status of a child with exceptional educational needs shall not be made within the period afforded the parent to request a hearing nor, if such is requested, before the hearing officer issues a decision, unless a program change is made with the written consent of the parent. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be made earlier, upon order of the school board, but without prejudice to any rights that the child or parent may have.

Although the School District has found that Anita's activity on September 17, 1984, endangered the health and safety of others while at school and that the interests of the school demanded her expulsion, more than that is required with respect to a handicapped student. Based upon case law and as stated in an opinion of the State Superintendent dated January 6, 1982:

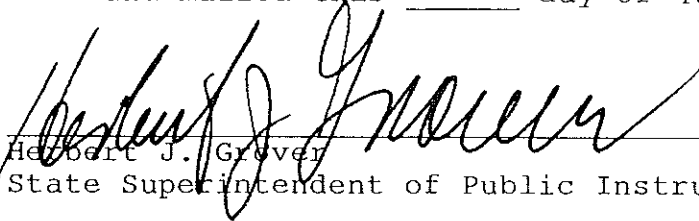
At a minimum, therefore, in the case of the EEN student, the board must not only consider the student's guilt or innocence of an expellable offense and the broader policy question of whether or not the interests of the school demand that student's expulsion, but must further, by referral to a report back from the M-team or comparable professional staffing arrangement, determine whether any causal relationship exists between the misconduct at issue and the student's handicapping condition. ... [T]he board has no discretion but to rely upon the judgment of the appropriate staffing as to this issue.

In Anita's case, the record supports the Board's conclusion that the appellant committed an expellable offense. The School District should be encouraged in its efforts to remove drugs from the school setting. Further, the School District acted responsibly in providing homebound instruction to Anita during the period of her expulsion. However, the State Superintendent is required on appeal to ensure that all procedural requirements have been followed. Because the Board did not make any finding, based upon a professional staffing, that Anita's handicap had no relationship to the behavior which resulted in her expulsion, the order of the Board must be reversed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Anita P [REDACTED] for the remainder of the first semester of the 1984-85 school year by the School District of Janesville Board of Education be and is hereby reversed.

Dated and mailed this 5th day of February, 1985.

  
Herbert J. Grover  
State Superintendent of Public Instruction