

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
SHAWN H. [REDACTED]  
by the Central/Westosha High School  
District Board of Education

DECISION  
AND  
ORDER  
92-EX-12

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NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to sec. 120.13(1)(c), Wis. Stats., from the order of the Central/Westosha Union High School District Board of Education to expel Shawn H. [REDACTED] from Central High School in the Westosha School District from April 7, 1992 through June 6, 1992. This appeal was filed by Shawn's mother, Mrs. Charles Tubbs and was received by the Department of Public Instruction on May 6, 1992.

In accordance with the provisions of sec. PI 1.04(5), Wis. Adm. Code, 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 sec. 120.13(1)(c), Wis. Stats. 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 interests of the school district demand that the student be expelled.

## FINDINGS OF FACT

The record contains a letter dated March 30, 1992 which was sent separately to Shawn and to his mother. The letter advised that a hearing would be held on April 7, 1992 to consider whether Shawn should be expelled. The letter also listed a series of violations of school rules which Shawn allegedly had committed and which formed the basis for the proposed expulsion.

The hearing was conducted in closed session on April 7, 1992. Shawn and his mother appeared at the hearing without counsel. A social services counselor also accompanied Shawn to the hearing. At the hearing, Mr. Gerald C. Sorenson, District Administrator, presented documents supporting the alleged violations of school rules by Shawn. Shawn was given an opportunity to address the allegations against him and did deny two charges which involved an objectionable picture and destruction of a school bus seat. He also indicated his current desire to remain in school.

After the hearing, the school board deliberated in closed session and returned with its decision to expel Shawn. The record indicates that the Findings and Order of Expulsion were mailed separately to Shawn and his mother on April 8, 1992. In reaching its decision, the school board found that Shawn had engaged in repeated violation of school rules, as indicated in the notice preceding the hearing. Specifically, the board found that Shawn had engaged in repeated truancy, study hall misbehavior, theft, classroom misbehavior and failure to follow

detention regulations. Finally, the school board found that the interests of the school demanded the pupil's expulsion.

#### 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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which 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 sec. 120.13(1)(c), Wis. Stats. In Racine Unified School Dist. 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. 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.

In reviewing the record in this case I find that the Central/Westosha Union High School School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

Finally, I do note that Shawn's mother indicates that Shawn was being evaluated for special education needs at the time of the expulsion proceeding. I have previously held that an expulsion appeal is not the appropriate context in which to challenge the school district's application of special education laws. Such a challenge is beyond the scope of an appeal to me under sec. 120.13(1)(c), Wis. Stats.

However, Shawn's mother should know that she may request a multidisciplinary team (M-team) evaluation for Shawn. If she disagrees with the findings of the M-team, she may request a due process hearing to challenge that decision using the laws governing special education. She may also request an independent evaluation of her son if she disagrees with the school district's evaluation. The independent evaluation would be at the school district's expense if the conditions in sec. PI 11.08, Wis. Adm. Code, are met. She should also feel free to call upon the school district staff or my staff for assistance in understanding Shawn's rights under special education law.

#### 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 sec. 120.13(1)(c),  
Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Shawn H [REDACTED]  
by the Central/Westosha Union High School District Board of  
Education is affirmed.

Dated this 1 day of July, 1992.

  
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Herbert J. Grover

State Superintendent of Public Instruction