

## THE STATE OF WISCONSIN

BEFORE

## THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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 In the Matter of the Expulsion of

TRAVIS M. [REDACTED]

 by the Tri-County Area School District  
 Board of Education

 DECISION  
 AND  
 ORDER

 94/95-EX-2
 

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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 September 26, 1994 order of the Tri-County Area School District Board of Education to expel Travis M. [REDACTED] from the Tri-County Area School District until June 2, 1995. This appeal, dated October 10, 1994, was filed by Travis's parents, Rick and Roxanne M. [REDACTED], and was received by the Department of Public Instruction on October 17, 1994.

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 entitled "Notice of Pupil Expulsion Hearing" dated September 19, 1994 from the District Administrator of the Tri-County Area School District. The letter advised that a hearing would be held on September 26, 1994 concerning the expulsion of Travis M. [REDACTED] from the Tri-County Area School District. The letter was sent separately to Travis and his parents by regular and certified mail. The letter alleged that Travis engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged Travis brought four knives onto a school bus with the intent to harm another student. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. A copy of two school board policies on weapons was also attached to the letter. The record also contains two disciplinary reports dated September 16, 1994, on Travis's conduct. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on September 26, 1994. Travis and his parents appeared at the hearing. They were not represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Travis and his parents were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. The school board policies concerning dangerous weapons in school were also admitted into the record.

After the hearing, the school board deliberated in closed session. The board found Travis 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 September 26, 1994, was mailed separately to Travis and his parents. The order stated Travis was expelled until June 2, 1995.

### 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.

The appeal letter in this case raises two issues which require consideration. First, Travis argues he was treated unfairly because all students involved in the incident of September 16, 1994 did not receive the same treatment. It is a long standing general rule that evenness or harshness of disciplinary measures are matters of discretion for the local school board. In the absence of unusual circumstances, this issue has not been reviewed by the State Superintendent. The local school board is in the best position to evaluate the evidence and to make the decision on appropriate discipline. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Eric P. v. Tomah Area School District Board of Education*, Decision and Order No. 210 (August 12, 1993).

Second, the appeal letter raises the possibility of Travis having an exceptional educational need. An expulsion appeal is not the proper forum to initially address special education issues. *Ernesto G. v. Waukesha School District Board of Education*, Decision and Order No. 200 (December 14, 1992). There is no evidence in the record to indicate Travis or his parents raised the EEN issue before or during the expulsion hearing. If Travis and his parents believe he should be referred for an M-team evaluation, they should contact the school district and make such a request. *Brad A.M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994).

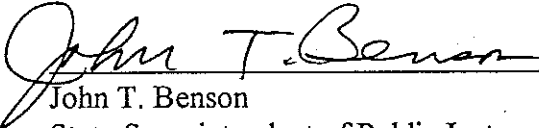
### CONCLUSIONS OF LAW

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 Travis M. [REDACTED] by the Tri-County Area School District Board of Education is affirmed.

Dated this 8th day of December, 1994.

  
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John T. Benson  
State Superintendent of Public Instruction