

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

 In the Matter of the Expulsion of

STEVIN W. B. [REDACTED]

 by the Baraboo School District
 Board of Education

 DECISION AND ORDER
 94/95-EX-17

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 May 10, 1995 order of the Baraboo School District Board of Education to expel Stevin W. B. [REDACTED] from the Baraboo School District through the 1995-96 school year. This appeal, dated May 18, 1995, was filed by the pupil's mother and was received by the Department of Public Instruction on May 26, 1995.¹

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

¹Due the to particular issues raised, the letter dated May 18, 1995 appealing this expulsion decision was also treated as a special education complaint under 34 CFR 300.660-662 of the regulations implementing the Individuals with Disabilities Act (IDEA) and secs. 115.77(3)(am) and 115.89(1), Wis. Stats. In addition, the pupil's mother requested a due process hearing under PI 11.10, Wis. Adm. Code. The due process hearing request alleged violations of procedural and substantive requirements in state and federal special education laws with regard to the pupil's education and his expulsion. The department is holding in abeyance its complaint investigation of issues which are also the subject of the pending due process proceeding.

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 "Notice of Pupil Expulsion Hearing" (Notice) dated April 11, 1995 from the District Administrator of the Baraboo School District. The letter advised that a hearing would be held on May 8, 1995 to consider the pupil's expulsion from the Baraboo School District. The Notice was sent separately to the pupil and his mother by certified mail. The Notice alleged that the pupil 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 Notice specifically alleged that on April 6, 1995 the pupil threatened another pupil on the school grounds with a knife, swinging the knife near the other pupil's neck and chest. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the Notice. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was accordingly held in closed session on May 8, 1995. The pupil and his mother appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion which had been outlined in the Notice. The administration also indicated that because the pupil was identified as a pupil with exceptional educational needs (EEN), a multi-disciplinary team (M-team) had re-evaluated the pupil after the knife incident and prior to the expulsion hearing. The M-team found that the knife incident was "not related to his learning disability and/or to any emotional disturbance."

The pupil and his parent were given the opportunity to present evidence, to cross examine all 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 the conduct alleged on school grounds and that the conduct 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 May 10, 1995, was mailed separately to the pupil and his mother. The order expelled the pupil through the 1995-96 school year.

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 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 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.* 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 this appeal, the pupil's mother focuses primary attention on her son's identification as a child with EEN and the programming provided to meet his exceptional educational needs. As indicated above in footnote 1, the pupil's mother has also requested a special education due process hearing. In the due process hearing request, she has challenged the pupil's expulsion and raised issues regarding the propriety of his education before and after the expulsion. Issues involving the evaluation of the pupil's known or suspected handicapping condition(s), the relationship, if any, of such condition(s) to the pupil's misconduct, the propriety of the education offered to the pupil before and after the expulsion, as well as the appropriate educational placement during the pendency of the due process proceeding are all subjects pending before and within the proper domain of the special education hearing officer. These issues are accordingly beyond the scope of this appeal. See, e.g., *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993).


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 Stevin W. B. [REDACTED] by the Baraboo School District Board of Education is affirmed with respect to the procedural requisites set out at sec. 120.13(1)(c), Wis. Stats. This order does not address the particular considerations and requisites under special education laws which are subjects of a pending due process hearing before a hearing officer, as well as a pending complaint before this agency.

Dated this 20th day of July, 1995.



John T. Benson
State Superintendent of Public Instruction