

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JESSE M. K [REDACTED]

by the Tri-County Area School District
Board of Education

DECISION AND ORDER
95/96-EX-4

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 October 10, 1995 order of the Tri-County Area School District Board of Education to expel Jesse K [REDACTED] from the Tri-County Area School District until August 25, 1996. This appeal, dated October 31, 1995, was filed by Jesse's attorney, John Symonds, and was received by the Department of Public Instruction on November 2, 1995.

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 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 October 2, 1995 from the District Administrator of the Tri-County Area School District. The letter advised that a hearing would be held on October 10, 1995 concerning the expulsion of Jesse Kawlewski from the Tri-County Area School District. The letter was sent separately to Jesse and his mother by regular and certified mail. The letter alleged that Jesse was guilty of repeated refusal or neglect to obey the rules and that he 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 that Jesse brought a knife to school on September 26, 1995 and refused to cooperate with the high school principal and law enforcement personnel in an attempt to resolve the matter. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. The record also contains disciplinary office referrals, an incident report, a six-page taped statement from a witness, the findings of the Manifestation Determination Meeting, the pupil's grades through October 10, 1995 and a request from the pupil's mother for another exceptional educational needs (EEN) evaluation. 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 October 10, 1995. Jesse did not appear at the hearing, but his mother appeared on his behalf and informed the board that she thought it was in Jesse's best interest for him not to be present. They were not represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Jesse's mother was 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 Jesse repeatedly refused or neglected to obey school rules and 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 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 October 10, 1995, was mailed separately to Jesse and his mother. The order stated Jesse was expelled until August 25, 1996.

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.

The appeal letter in this case raises several issues. First, Jesse alleges that the notice of hearing did not comply with the requirements of sec. 120.13(1)(c), Wis. Stats., which requires that:

Not less than 5 days' written notice of the hearing shall be sent to the pupil and, if the pupil is a minor, to the pupil's parent or guardian, specifying the particulars of the alleged refusal, neglect or conduct, stating the time and place of the hearing and stating that the hearing may result in the pupil's expulsion.

Jesse argues that the district did not specify the particulars of the alleged refusal, neglect or conduct since at the hearing the district relied on a vehicle tampering incident allegedly perpetrated by Jesse as a basis for the expulsion decision and that such conduct was not specified in the notice.

The audio tape of the administration's presentation on Jesse's bringing a knife to school reveals that Jesse felt he was the target of harassment. The board inquired as to why Jesse felt this way. In response to that inquiry, an incident was discussed concerning allegations that Jesse and some other students had been involved in a car theft during the summer of 1993. Following that discussion, an incident concerning Jesse allegedly tampering with another student's vehicle at school was discussed. This latter incident was not included in the notice of hearing sent to Jesse and his mother but it had been the subject of an earlier disciplinary process apparently resulting in a detention. Because of this and because the hearing notice indicated reference might be made to the pupil's complete disciplinary history, and further, because no specific findings were made by the board regarding this incident, I conclude it was not error for the board

to hear this information as background. Compare *Jarrett N. v. Baraboo School District Board of Education*, Decision and Order No. 183 (December 23, 1991) and *Jennifer P. v. Waukesha School District Board of Education*, Decision and Order No. 226 (April 18, 1994).

Jesse also argues that the notice was deficient since it did not specify that Jesse's emotional/behavioral problems were going to be an issue at the hearing. While such provision of notice may be the better practice, I do not find it error to have failed to provide it in this case. The record reveals that Jesse was evaluated in 4th and 8th grade and found not to have an exceptional education need (EEN) under subch. V of ch. 115, Wis. Stats., and 20 U.S.C. 1400 *et seq.* Jesse's mother has requested that he be reevaluated. The district is apparently acting upon that request.

If Jesse is determined to have an EEN and his conduct was a "manifestation of his disability," the district may not expel him. Further, if Jesse is determined to have an EEN but his conduct was *not* a "manifestation of his disability," the district may expel him, but must continue to provide a free, appropriate public education to him. If Jesse's mother is dissatisfied with the district's determinations regarding Jesse's EEN evaluation she may appeal those determinations using the due process procedures available under the special education laws cited above. I am not authorized to review these determinations in the context of this expulsion appeal.

The district has currently identified Jesse as disabled under sec. 504 of the Rehabilitation Act of 1973 because he has Attention Deficit Disorder. Although this department is not authorized to enforce sec. 504, it is generally understood that sec. 504 prohibits expulsion of a pupil for conduct which is a manifestation of his disability. The district was apparently aware of this prohibition and accordingly included in its affirmative case its determination that Jesse's misconduct was not a manifestation of his disability. The district may also have included the

non-manifestation evidence as general background or it may have been anticipating a claim of manifestation by the parent as a defense to an expulsion. Regardless, I do not find the district relied on the presence or absence of a disability to seek or to establish grounds for an expulsion, but rather on the child's alleged misconduct. If Jesse is dissatisfied with the district's determination as to whether his misconduct was a manifestation of his disability, he may use the appeal procedures provided under sec. 504 to challenge that determination. I am not authorized to review that determination in the context of this expulsion appeal under sec. 120.13(1)(c), Wis. Stats.

Next, Jesse argues that the record is devoid of any evidence that his conduct of bringing a knife to school endangered anyone or anything. The term "endanger" means to bring into danger or peril. The concept of "danger" involves harm, damage or the chance of loss or injury or the capability of producing death or great bodily harm. See the definition of "dangerous weapon" in sec. 939.22(10), Wis. Stats. These terms embrace the notion of harmful acts or actions which are detrimental or involve loss or damage. *Kirstin J. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992) and *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995). In this case I find it was within the school board's discretion to conclude that Jesse's conduct of bringing a knife to school endangered the health or safety of pupils. Moreover, I have repeatedly upheld expulsions based on pupils' bringing knives to school. *Rebecca S. v. Janesville School District Board of Education*, Decision and Order No. 248 (May 8, 1995), *Ramiro L. v. Westfield School District Board of Education*, Decision and Order No. 217 (January 31, 1994), and *Brian V. v. Shorewood School District Board of Education*, Decision and Order No. 195 (June 8, 1992).

Next, Jesse argues that the evidence does not support a finding that he repeatedly refused or neglected to obey the school rules, where his conduct did not occur on several different dates or during several different distinctive time periods.

My predecessor has held that two violations of school rules constitute repeated violation of school rules within the meaning of sec. 120.13(1)(c), Wis. Stats. *William S. v. Suring School District Board of Education*, Decision and Order No. 98 (June 17, 1982), *Russell T. v. Tigerton School District Board of Education*, Decision and Order No. 99 (June 17, 1982).

Jesse's conduct of bringing a knife to school constitutes a violation of school rules. The statute, attached to the hearing notice, gives the pupil and parent explicit notice that conduct that endangers health and safety is grounds for expulsion. Jesse's refusal to cooperate with the school's investigation might constitute a second rule violation. But while the record adequately demonstrates the school had a rule prohibiting dangerous weapons, it does not reflect proof of a rule prohibiting non-cooperation with school investigations or lying to school authorities in the course of such investigation. The expulsion statute does not specifically include as a ground for expulsion non-cooperation or lying to school investigating authorities. If such misconduct is to be the basis or part of the basis for an expulsion as violation of a school rule, the district must prove the existence of the rule and prior notice of it to the student body. This record fails to do that. *Hope B. v. Randolph School District Board of Education*, Decision and Order No. 225 (April 12, 1994). Because this was an alternative ground and the ground based on possession of the knife as dangerous was adequately proven, this error does not call for reversal.

Lastly, Jesse argues that his expulsion should be reversed since he has very limited options for continuing his education, as evidenced by two other schools refusing to accept him.

I am not authorized to reverse Jesse's expulsion based on this fact. Rather, my review is to ensure that the required statutory procedures were followed by the school board.

For the reasons mentioned, I must affirm this expulsion.

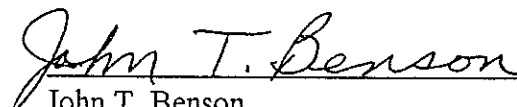
CONCLUSIONS OF LAW

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. I am therefore compelled to affirm this expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jesse K. [REDACTED] by the Tri-County Area School District Board of Education is affirmed.

Dated this 2nd day of January, 1996.



John T. Benson
State Superintendent of Public Instruction