

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

LEROY H [REDACTED]

by the Kewaunee School District
Board of Education

DECISION AND ORDER
95/96-EX-24

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 January 9, 1996 decision of the Kewaunee School District Board of Education to expel LeRoy H [REDACTED] (the pupil) from the Kewaunee School District for the remainder of the 1995-96 school year. This appeal, dated February 16, 1996, was filed by the pupil's mother and was received by the Department of Public Instruction on February 22, 1996.

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 December 20, 1995 from the district's Superintendent sent separately to the pupil and to the pupil's mother. The letter advised that a hearing would be held on January 9, 1996 to consider the pupil's expulsion. The letter listed specific incidents in which the pupil had allegedly repeatedly neglected to obey school rules and had endangered the health and safety of other students. The record also contains a transcript of the school board expulsion hearing.

The hearing was held on January 9, 1996. The pupil and his mother appeared at the hearing without counsel. The school district administration presented evidence concerning the grounds for expulsion, specifically the pupil's failure to follow school rules which had been outlined in the letter notifying the parent and pupil of the hearing. Because the pupil is a child with an exceptional educational need (EEN), the district also presented evidence of a determination by a multidisciplinary team indicating that the pupil's misconduct was not a manifestation of his disability.

The parent and pupil were given an opportunity to address the board. The parent repeatedly stressed her concern that the pupil has unique needs and requires a unique educational program. The district assured her that should they decide to expel the pupil, they would continue to provide a special education program to him pursuant to an IEP.

The school board found that the pupil had repeatedly violated school rules and that the interests of the school demanded expulsion. After the hearing, findings of fact, conclusions of law and an order were separately sent to the pupil and his mother.

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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 543 N.W. 2d 843 (1995). 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 her letter of appeal, the pupil's mother indicates that she was not adequately advised of the purpose of the "manifestation" meeting and she appears to question the validity of the determination that the pupil's conduct was not a manifestation of his disability. She also

questions the propriety of his education program prior to expulsion, as well as the sufficiency of the services being provided during this period of expulsion. Finally, the pupil's mother expresses concerns regarding the education program that will be offered when the pupil returns to school next year. As I have repeatedly ruled in prior decisions, I am not authorized to address any of these issues in the context of an expulsion appeal under s. 120.13(1)(c). See, e.g., *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172, (October 8, 1990); *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993). The parent may pursue all of these issues by requesting a special education due process hearing under the specific procedures governing the provision of education to children with EEN. If she has questions or concerns regarding such a procedure, she should feel free to contact the district or my staff for further information. In addition, if the parent believes the district has violated requirements regarding the provision of special education, she may file a written complaint with my Department under the Individuals with Disabilities Education Act (IDEA).

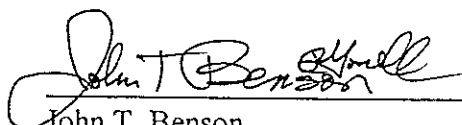
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of LeRoy H [REDACTED] by the Kewaunee School Board of Education is affirmed.

Dated this 27th day of March, 1996.



John T. Benson
State Superintendent of Public Instruction