

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JOSEPH M [REDACTED]

by the Unity School District
Board of Education

DECISION AND ORDER
95/96-EX-30

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 March 28, 1996 order of the Unity School District Board of Education to expel Joseph M [REDACTED] from school through the end of the first semester of the 1996-97 school year. That order further provided for homebound instruction to the pupil pending his evaluation for exceptional educational needs (EEN) or a disability under section 504. This appeal, dated April 1, 1996, was filed by the pupil's attorney, Jordan S. Kushner, and was received by the Department of Public Instruction on April 1, 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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record indicates that the pupil was not identified as a child with EEN or a child with a disability under s. 504 at the time of his expulsion hearing. However, he had been previously diagnosed as having ADHD. At the expulsion hearing his parent and his attorney requested further evaluation with regard to potential disabilities. The board voted to expel the pupil with homebound services pending the completion of such evaluation.

By letter dated May 16, 1996, counsel for the school district advised the Department that on May 13, 1996 the Unity School Board voted to rescind its expulsion order. The board rescinded its order because the pupil has now been identified as a child with EEN and it has further been determined that his misconduct was a manifestation of his disability. The district requests dismissal of this appeal based on mootness.

DISCUSSION

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.

Counsel for the pupil has argued that the district knew or should have known that the pupil has a disability and should have postponed the expulsion hearing pending an appropriate evaluation. With regard to a child with an *identified* exceptional educational need, the State Superintendent has reversed an expulsion decision based on a board's failure to consider whether the pupil's handicapping condition was related to the misconduct. With regard to all other aspects of special education law, however, the State Superintendent has previously determined that an expulsion appeal is not the appropriate context in which to challenge the district's application of special education requirements to a particular pupil. See *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 28 (May 14, 1996); *Matthew C. v. Lake Geneva-Genoa City School District Board of Education*, Decision and Order No. 277; March 12, 1996; *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985).

Considerations governing special education, and beyond the scope of this appeal, may support postponing an expulsion proceeding pending an EEN or s. 504 evaluation in certain circumstances. While I am not authorized under sec. 120.13(1)(c) to direct a district to postpone an expulsion hearing pending such an evaluation, a court does appear authorized to do so. See,


e.g., *Jeffrey S. v. School Board of Riverdale School District*, 21 IDELR 1164. The parent may pursue any remaining dispute regarding the district's provision of a free appropriate education to the pupil through the particular procedures governing special education. I am not authorized to address such issues in the context of this appeal.

A moot case is one in which "a judgment upon some matter which when rendered for any cause cannot have any practical legal effect upon the existing controversy." *In the Matter of K.H.*, 98 Wis. 295, 300, 296 N.W. 2d 746 (1980), citing *State ex rel. Ellenburg v. Gagnon*, 76 Wis. 2d 532, 535, 251 N.W. 2d 773 (1976). Because the board has rescinded its order and because I am not authorized to address related special education issues in the context of this appeal, I believe this expulsion appeal is moot. See *Sarah C. v. Oak Creek-Franklin School District Board of Education*, Decision and Order No. 285 (April 16, 1996). Therefore, I am compelled to dismiss the appeal.

ORDER

IT IS THEREFORE ORDERED that because the board has rescinded its expulsion order this appeal is dismissed as moot.

Dated this 24th day of May, 1996.


John T. Benson
State Superintendent of Public Instruction