

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of JESSE P [REDACTED] by the Hustisford School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-31</p>
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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 March 20, 1996 order of the Hustisford School District Board of Education to expel Jesse P [REDACTED], a 10th grade pupil, from school until his 21st birthday. This appeal, dated April 5, 1996, was filed by Jesse's mother and was received by the Department of Public Instruction on April 9, 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 contains "Notice of Expulsion Hearing" dated February 28, 1996. This notice advised that a hearing would be held on March 14, 1996 which could result in Jesse's expulsion from school until his 21st birthday. This notice was sent separately to Jesse and his parents. The notice alleged Jesse 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 Jesse brought a knife to school on February 21, 1996. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The record also contains the minutes of the school board expulsion hearing, and a one-page description of the pupil's conduct submitted by the school principal. Jesse's academic and prior disciplinary history and an audio tape of the hearing are also included in the record.

The hearing was held in closed session on March 14, 1996. Jesse and his mother appeared at the hearing without counsel. At the hearing the school administration presented evidence on the ground for expulsion alleged in the notice. Jesse and his mother were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Jesse 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 board further found that the interest of the school demands the pupil's expulsion. The board expelled Jesse from school until his 21st birthday. The order of expulsion containing the findings of the board was dated March 20, 1996. It was mailed separately to Jesse and his parents.

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.*, 199 Wis. 2d 1, 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.

The appeal letter in this case raises two issues that require consideration. First, Jesse argues the penalty of expulsion is too harsh. Jesse argues he did not threaten anyone with the knife, use the knife or have any intent to use the knife. He testified that when he left for school

that morning he grabbed the wrong jacket and the knife was in that jacket. As the school district correctly points out, the severity of discipline measures is a matter within the discretion of 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. *Travis M. v. Tri-County Area School District Board of Education*, Decision and Order No. 241 (December 8, 1994).

Second, Jesse argues he may have the need for exceptional educational needs (EEN) testing. The issue was discussed before the local school board. Jesse's mother stated she did not consent to the EEN testing that the school district recommended. She stated she was exploring other examination and treatment options at the time. I have previously held that an expulsion appeal is not proper forum to initially address special education issues. *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995). The State Superintendent has reversed expulsions based on the board's failure to consider whether the pupil's handicapping condition was related to the misconduct. *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985). If Jesse or 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)).

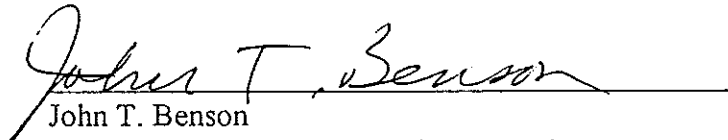
CONCLUSIONS OF LAW

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 Jesse P [REDACTED] by the Hustisford School District Board of Education is affirmed.

Dated this 10th day of June, 1996.


John T. Benson
State Superintendent of Public Instruction