

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  NICOLE R. [REDACTED]  by the Granton Area School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-39</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 May 28, 1996 order of the Granton Area School District Board of Education to expel Nicole R. [REDACTED] from the Granton Area School District through the end of the first semester of the 1996-97 school year. This appeal, dated July 18, 1996, was filed by Nicole's parents and was received by the Department of Public Instruction on July 29, 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 a letter dated May 8, 1996 from Principal Gordon E. Port of the Granton Area School District. The letter advised that a hearing would be held on May 20, 1996 which could result in the pupil's expulsion from school. The letter was sent to Nicole by regular and certified mail and hand delivered separately to Nicole's parents. The letter alleged that Nicole engaged in conduct while at or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged that on May 2, 1996 Nicole engaged in sexual intercourse with a male student while at school. A current copy of sec. 120.13(1)(c), Wis. Stats., accompanied the letter. The record contains an incident report prepared by Mr. Port. Minutes of the school board expulsion hearing and an audio tape of the hearing are also part of the record.

The hearing was held in closed session on May 20, 1996. Nicole and her parents appeared at the hearing represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Nicole and her parents 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 Nicole did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and that also violated school rules. 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 28, 1996, was mailed separately to Nicole and her parents. The order stated Nicole was expelled through the end of the first semester of the 1996-97 academic 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.* 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 several issues which require consideration. First Nicole argues that the school board failed to take into consideration her social, emotional and

mental health needs as a student in the district and further failed to consult with the counselor who had previously worked with Nicole prior to making their expulsion decision.

I note that the district's findings and conclusions indicate that Nicole has not been found to be a student with exceptional education needs (EEN) under chapter 115, Wis. Stats. With regard to a pupil with an *identified* exceptional education need, the State Superintendent has reversed an expulsion decision based on the board's failure to consider whether the pupil's handicapping condition was related to the misconduct. See *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985) and *Joe M. v. Milton School District Board of Education*, Decision and Order No. 125 (February 22, 1985). These decisions, however, were based on the particular requisites and protections under both state and federal law relating to pupils with *identified* EEN.

It appears that Nicole's parents requested that Nicole be evaluated under sec. 504 of the Rehabilitation Act of 1973 because of the status of her mental health before and since the incident. The district should comply with that request pursuant to applicable requirements of sec. 504. However, I am not authorized to review the district's actions under sec. 504 in the context of this expulsion appeal under sec. 120.13(1)(c), Wis. Stats. See *Jesse M. v. Tri-County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996) and *Matthew C. v. Lake Geneva-Genoa City School District Board of Education*, Decision and Order No. 277 (March 12, 1996).

Nicole also suggests that her behavior did not constitute conduct that endangered the property, health or safety of others. The term "endanger" means to bring into danger or peril. The concept of danger involves harm, damage or the chance of loss or injury. These terms

embrace the notion of harmful acts or actions which are detrimental or involve loss or damage. *Justin M. v. Fort Atkinson School District Board of Education*, Decision and Order No. 263 (December 5, 1995); *Mukwonago Area School District Board of Education*, Decision and Order No. 185 (February 21, 1992); and *Micheline J. v. Washington Island School District Board of Education*, Decision and Order No. 165 (August 1, 1989).

I find that it was reasonable for the district to conclude that Nicole's conduct of having sexual intercourse with another student during school hours and on school property endangered the health and safety of pupils. Moreover, the State Superintendent has previously upheld expulsions based on sexual intercourse as endangering the health or safety of others. See *Kathleen W. v. Tri-County Area School District School District Board of Education*, Decision and Order No. 130 (May 10, 1985) and *William S. v. Tri-County Area School District School District Board of Education*, Decision and Order No. 132 (June 21, 1985).

Finally, Nicole challenges the length of the expulsion as too extreme. I have repeatedly held that the length of an expulsion is within the discretion of the board so long as the board complies with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. See *Amanda L. v. Hartford Union High School District Board of Education*, Decision and Order No. 257 (August 3, 1995); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); and *Lavell A. v. Kenosha Unified School District Board of Education*, Decision and Order No. 147 (January 12, 1987).

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

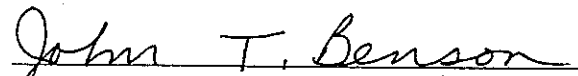
**CONCLUSIONS OF LAW**

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.

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Nicole R [REDACTED] by the Granton Area School District Board of Education is affirmed.

Dated this 19th day of September, 1996.

  
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John T. Benson  
State Superintendent of Public Instruction