

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>HEATHER K [REDACTED]</p> <p>by the D.C. Everest Area School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-06</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 October 30, 1996 order of the D.C. Everest Area School District Board of Education to expel Heather K [REDACTED] (the pupil) from the D.C. Everest Area School District until January 20, 1997. The pupil is in 11th grade. This appeal, dated November 25, 1996, was filed by the pupil's parents and was received by the Department of Public Instruction on December 3, 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 entitled "Notice of Expulsion Hearing" dated October 21, 1996 from the district's high school principal. The letter advised that a hearing would be held on October 30, 1996 which could result in the pupil's expulsion from the D.C. Everest Area School District. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil engaged in conduct while on school grounds which constituted repeated refusal or neglect to obey school rules and which endangered her safety or the well-being of other students. The letter specifically alleged failure to serve detention on 7 dates, defiance or willful disobedience on 60 dates, classroom disruption on 3 dates, profanity on 7 dates, bus referral/inappropriate behavior on 1 date and bus referral/profanity on 1 date. A summary of rights as provided in sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains written disciplinary referrals prepared by school staff which further describe the pupil's rule violations, as well as portions of the pupil's grade and attendance records. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on October 30, 1996. The pupil and her parent appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent were given the opportunity to present evidence and to respond to the allegations. The pupil agreed that her conduct on the dates listed constitutes misconduct in violation of school rules, but pointed out that her failure to serve detention on October 9, 1996 was due to a late bus.

According to the minutes of the expulsion hearing, the pupil was evaluated this school year for a suspected disability. She was found not to have an exceptional educational need (EEN) under Subchapter V of Chapter. 115, Wis. Stats. However, district staff indicated that the pupil would receive accommodations under s.504 upon her return to school. The nature of her disability under s.504 is not clearly reflected in the record.

After the hearing, the school board deliberated in closed session. The board found the pupil did repeatedly refuse or neglect to obey school rules and 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. The school board further found that the interests of the school demand the student's expulsion. The board also found that the pupil's misconduct was not related to exceptional educational needs. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated October 30, 1996, was mailed separately to the pupil and her parents. The order stated the pupil was expelled for the remainder of the first semester of the 1996-97 school 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 argues that the pupil has a disability which is related to her pattern of misconduct and that the school should have addressed her needs rather than expelling her. My authority to review expulsion decisions is, however, limited as outlined above. In the case of a pupil with an identified EEN, the state superintendent has reversed expulsion decisions in which the board failed to consider whether the pupil's handicapping condition was related to the misconduct. With regard to all other areas of special education law, as well as s.504, an expulsion appeal is not the appropriate context in which to challenge the district's actions. See e.g. *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996); *Joseph M. v. Unity School District Board of Education*, Decision and Order No. 292 (May 24, 1996); *Anita P. v. Janesville School District Board of Education*, Decision and

Order No. 124 (February 5, 1985). The parents may choose to pursue these arguments under the specific procedures available under Subchapter V of Chapter. 115, Wis. Stats. and under s.504.

The parents may contact district staff or my staff for further information on procedures and appeal rights under those provisions of law.

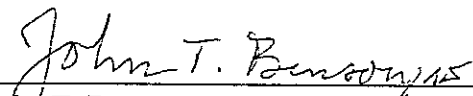
CONCLUSIONS OF LAW

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 Heather K [REDACTED] by the D.C. Everest Area School District Board of Education is affirmed

Dated this 15th day of January, 1997.



John T. Benson
State Superintendent of Public Instruction