

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>MICHAEL L [REDACTED]</p> <p>by the New Richmond School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-23</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 January 30, 1997 order of the New Richmond School District Board of Education to permanently expel the above named ninth grade pupil from the New Richmond School District. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on April 14, 1997.

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 January 8, 1997 from the district administrator of the New Richmond School District. The letter advised that a hearing would be held on January 22, 1997 which could result in the pupil's expulsion from the New Richmond School District. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil engaged in conduct while on school grounds that endangered the property health and safety of others. The letter specifically alleged that on January 6, 1997 the pupil was in possession of a knife on school grounds. A current copy of sec. 120.13(1)(c), Wis. Stats., accompanied the letter. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing, a police report surrounding the incident and the pupil's complete academic and disciplinary record are part of the record.

The hearing was held in closed session on January 22, 1997. The pupil and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents 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 the pupil 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 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 January 30, 1997, was mailed separately to the pupil and his parents. The order stated the pupil was permanently expelled but that the pupil could apply for early readmission at the start of the second semester of the 1997-1998 academic

year if he has earned at least 4 transferable credits in subjects recognized for graduation purposes at New Richmond High School, or not later than the start of the 1998-1999 academic year if he has earned at least 6 credits in the same manner and upon submission of a satisfactory psychological examination.

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 pupil's parents raise one issue in their appeal letter. The parents argue that their son's epilepsy has caused problems with his memory and impulse control. They further argue that although their son was tested three years ago by the district for special education services, the district found him ineligible for such services. Moreover, they argue that they were unaware of IEP's or of the procedures available under sec. 504 of the Rehabilitation Act of 1973. The parents allege that if the appropriate evaluations and placements had been performed their son would not have been expelled. The record indicates that the pupil was evaluated by an M-team three years ago and found not to have an exceptional education need (EEN).

With regard to a pupil with an *identified* exceptional education need, the State Superintendent has reversed an expulsion based on a school board's failure to consider whether a 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 were based on the particular requisites and protections under both state and federal law relating to pupils with an identified EEN.

With regard to all other aspects of special education law, however, the State Superintendent has determined that an expulsion appeal is not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is beyond the scope of sec. 120.13(1)(c), Wis. Stats. *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990).

During the pendency of an expulsion proceeding or even after an expulsion decision is effective, a pupil may be referred for an M-team evaluation as to a suspected handicapping condition. If the pupil's parents disagree with the findings of the evaluation, they may request a due process hearing to challenge the matter. They may also request an independent evaluation, of their son. If the conditions of sec. PI 11.08, Wis. Adm. Code are met, the independent evaluation would be at district expense. The parents should call upon the district or staff at the Department of Public Instruction, if necessary, for assistance in understanding their son's rights under special education law.

The record does not indicate whether the pupil has ever been identified as disabled under sec. 504 of the Rehabilitation Act of 1973 because of his epilepsy. Although this department is not authorized to enforce sec. 504, it is generally understood that sec. 504 prohibits expulsion of a pupil for conduct which is a manifestation of his disability. In this case, the pupil's parents may request a sec. 504 evaluation to determine if their son is disabled due to his epilepsy. However, I am not authorized to review that determination in the context of this expulsion appeal. 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).

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

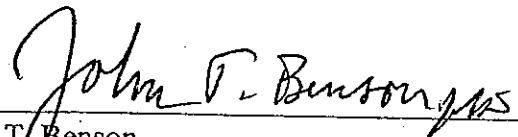
CONCLUSIONS OF LAW

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 Michael L. [REDACTED] by the New Richmond School District Board of Education is affirmed.

Dated this 2nd day of June, 1997.



John T. Benson
State Superintendent of Public Instruction