

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  TARA V [REDACTED]  by the Edgerton School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-33</p>
---	---

**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 July 8, 1997 order of the Edgerton School District Board of Education to expel the above named pupil from the Edgerton School District for the remainder of the 1996-97 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on July 30, 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 June 2, 1997 from the district administrator of the Edgerton School District. The letter advised that a hearing would be held on June 24, 1997 which could result in the pupil's expulsion from the Edgerton School District. The letter was sent separately to the pupil and her parents by regular and certified mail. The letter alleged that the pupil engaged in conduct while on school grounds that endangered the health and safety of other students. The letter specifically alleged that on May 30, 1997, on the grounds of the Edgerton High School, Tara Vanwormer was in possession of marijuana and a marijuana pipe. A current copy of sec. 120.13(1)(c), Wis. Stats., accompanied this notice. Minutes of the school board expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on June 24, 1997. The pupil and her parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and her 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 Tara Vanwormer 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 order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated July 8, 1997, was mailed separately to the pupil and her parents. The order stated Tara Vanwormer was

expelled for the remainder of the 1997-98 and 1998-1999 school year, with an opportunity for early readmission at the completion of the second term of the 1998-1999 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 raises two issues which require consideration. First, the parent alleges that expulsion was too harsh. It has repeatedly been held that the decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at sec. 120.13(1)(c) Wis. Stats. *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Troy Y v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997). I find that the board complied with all procedural requirements of sec. 102.13(1)(c), Stats. ; therefore, the board's decision to expel for two years is upheld.

Secondly, the parent alleges that Tara has been diagnosed as ADHD. 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 L. v. New*

*Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997);  
*Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172  
(October 8, 1990). There is no evidence in the record that Tara was identified as an EEN student,  
thus this issue is beyond the scope of this review.

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

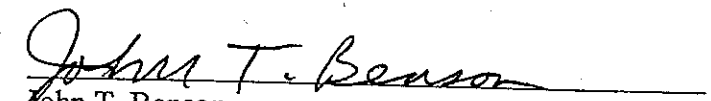
### CONCLUSIONS OF LAW

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 Tara V [REDACTED] by the Edgerton  
School District Board of Education is affirmed.

Dated this 22nd day of September, 1997.

  
John T. Benson  
State Superintendent of Public Instruction