

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

STEPHANIE T [REDACTED]

by the Milwaukee School District  
Board of Education

DECISION AND ORDER  
97/98-EX-09

**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 29, 1997 order of the Milwaukee School District Board of Education to expel the above named pupil from the Milwaukee School District until October 21, 1998. This appeal was filed by the pupil and was received by the Department of Public Instruction on January 7, 1998.

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 9, 1997 from the student services coordinator of the Milwaukee School District. The letter advised that a hearing would be held on October 21, 1997 which could result in the pupil's expulsion from the School District. The letter was sent separately to the pupil and her guardian by delivery service. The letter alleged that the pupil engaged in conduct while on school grounds that endangered the health, property and safety of other students. The letter specifically alleged that on April 18, 1997 she possessed a loaded handgun at John Marshall High School.<sup>1</sup> Minutes of the independent hearing panel hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on October 21, 1997. The pupil and her guardian, Tiana Hood, appeared at the hearing without counsel. At the commencement of the expulsion hearing the city attorney orally amended the charge to allege that Cassandra endangered the health, safety or property of others while not at school or not under the supervision of school authority. Specifically, the city attorney informed the panel and pupil that the evidence would show that the pupil brandished the weapon and threatened another student on the way to John Marshall High School on the morning of April 18.<sup>2</sup> This is the same conduct that was included in the written notice of the hearing and the pupil did not object to the oral amendment of the charges. At the hearing the school district administration presented evidence concerning the

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<sup>1</sup> Because the pupil was incarcerated at the Southern Oaks School for Girls in Union Grove, WI, there was a lengthy delay between the conduct and the expulsion notice and hearing.

<sup>2</sup> The evidence produced at the expulsion hearing indicated that this confrontation between Stephanie and another student occurred on a city bus on its way to school. It also indicated that Stephanie returned to school but that she passed the gun off to a third party. There was evidence produced as to the negative effect this incident had not only on the target of Stephanie's actions but also the other students coming into school that morning.

grounds for expulsion. The pupil and her guardian were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the panel deliberated in closed session. The panel found the pupil did engage in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others. The panel further found that the interests of the school demand the student's expulsion. The proposed order for expulsion containing the Findings of Fact and Conclusions of Law of the panel, dated October 21, 1997, was mailed separately to the pupil and her guardian. On November 7, notification of the school board's order of expulsion (dated October 29, 1997) which adopted the independent hearing panels' order was mailed separately to the pupil and her guardian. The order stated Stephanie was expelled until October 21, 1998.

### 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 one issue which requires consideration. The pupil states in her letter that she had a right to have an attorney represent her at the expulsion hearing. She states that it is unfair that the school administration had an attorney but she did not. While the pupil and her parent or guardian must be informed that they may be represented by counsel at the hearing, *see sec. 120.13(1)(c)4.e., Stats.*, it does not require that the school district, or any other entity, provide counsel to the pupil or her parent or guardian. Because there is no obligation to provide an attorney, there was no procedural error.

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

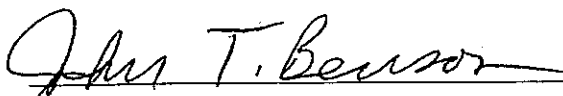
**CONCLUSIONS OF LAW**

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 Stephanie T [REDACTED] by the Milwaukee Public Schools Board of Education is affirmed.

Dated this 3rd day of March, 1998.

  
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John T. Benson  
State Superintendent of Public Instruction