

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of MATT H [REDACTED] by the Tomorrow River School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-10</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 November 26, 1997 order of the Tomorrow River School District Board of Education to expel the above named pupil from the Tomorrow River School District for the remainder of the 1997-98 school year. This appeal was filed by the pupil's grandparents and was received by the Department of Public Instruction on January 23, 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 November 12, 1997 from the principal of the Tomorrow River Junior/Senior High School. The letter advised that a hearing would be held on November 24, 1997 which could result in the pupil's expulsion from the Tomorrow River School District. The letter was sent separately to the pupil and his grandparents certified mail. The letter alleged that the pupil 1) is guilty of repeated refusal or neglect to obey the rules, and 2) engaged in conduct while at school or under the supervision of school authority which endangered the property, health, or safety he well-being of other students. The letter specifically alleged that Matt possessed marijuana while at school on November 11, 1997. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on November 24, 1997. The pupil's grandparents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The grandparents 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 repeatedly refuse or neglect to obey the 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 and that the pupil 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 November 26, 1997, was

mailed separately to the pupil and his grandparents. The order stated Matt was expelled for the remainder of the 1997-98 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 one issue which requires consideration. The grandparents state that Matt was expelled unjustly. 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).

In a subsequent letter to the Department of Public Instruction, the grandparents raise several other questions regarding the equity of the expulsion of Matt compared to disciplinary decisions in other school districts. The disciplinary measures used in other schools are not relevant to the decisions made by Tomorrow River School District. The grandparents also question the expulsion record of the principal at Tomorrow River Junior/Senior High School. The principal's decisions as it relates to other students is not relevant to this expulsion appeal.

In this same letter, the grandparent raises several "procedural issues". First, the grandparent alleges that Matt suffered from emotional problems and that the school district did not adequately address those problems. However, the letter also states that Matt was evaluated by the school counselor. 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 Matt was identified as an EEN student, thus this issue is beyond the scope of this review.

Second, the grandparent argues that they the meeting was held in closed session, allegedly against the grandparent's wishes.¹ The state superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993); *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993).

Third, the grandparent states that she should have received a transcript of the audio tape. The statute requires only written minutes. The purpose of these minutes is to ensure that the procedures were followed. An audio tape or transcript is not required. Therefore, there were no procedural errors.

¹ There is no evidence in the record that the grandparent requested a closed hearing.

Finally, the grandparents object to the use of Matt's previous pupil records at the expulsion hearing. If the school board provides notice to the pupil that these records may be used to determine the punishment, the school board may use these records. In Matt's case, the notice of expulsion hearing indicated the following:

"Please be advised that Matt's complete academic, attendance, and disciplinary records with the District may be reviewed by the Board of Education if the above misconduct is proven by the Administration, and the Board considers whether or not to expel Matt from school."

Therefore, it was permissible for the board to consider these records.

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

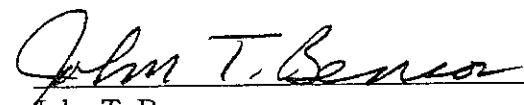
CONCLUSIONS OF LAW

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 Matt H. [REDACTED] by the Tomorrow River School District Board of Education is affirmed.

Dated this 23rd day of March, 1998.



John T. Benson
State Superintendent of Public Instruction