

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ROBERT M. [REDACTED]

by the Arcadia School District
Board of Education

DECISION AND ORDER
97/98-EX-14

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 December 23, 1997 order of the Arcadia School District Board of Education to expel the above named pupil from the Arcadia School District for the remainder of the 1997-98 school year. This appeal was filed by the pupil's parents/attorney and was received by the Department of Public Instruction on February 11, 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 December 15, 1997 from the district administrator of the Arcadia School District. The letter advised that a hearing would be held on December 22, 1997, which could result in the pupil's expulsion from the Arcadia School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the was guilty of repeated refusal or neglect to obey school rules. The letter specifically alleged that 1) on September 9, 1997 Robert picked on another student after school and when the student's older sister intervened, he pushed and hit her; 2) on September 10, 1997 he referred to the same student with vulgar language that was overheard by a teacher and other students; 3) on September 24, 1997 he was disruptive in choir; 4) on November 4, 1997 he chewed tobacco in choir; 5) on November 12 1997 he skipped class during activity period; 6) on November 13, 1997, he reported to Physical Education class without proper clothing for the fifth time; 7) on November 20, 1997, exhibited rude, discourteous and disruptive behavior in choir; and, 8) On December 8, 1997, he exposed himself during choir rehearsal allegedly to collect money from other students. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on December 22, 1997. The pupil and his mother 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 repeatedly refuse or neglect to obey 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 December 23, 1997 was mailed separately to the pupil and his parents. The order stated Robert 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 parent objects to the fact that Robert was not tested for special education needs. 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 Robert was identified as an EEN student, thus this issue is beyond the scope of this review. 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.

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

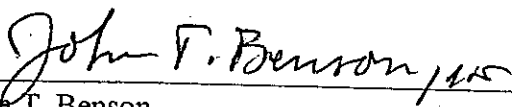
CONCLUSIONS OF LAW

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 Robert M. [REDACTED] by the Arcadia School District Board of Education is affirmed.

Dated this 6th day of April, 1998.



John T. Benson
State Superintendent of Public Instruction