

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
Nicholas Z [REDACTED]
by the Pittsville School District
Board of Education

DECISION AND ORDER
97/98-EX-17

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 February 2, 1998 order of the Pittsville School District Board of Education to expel the above named pupil from the Pittsville School until May 29, 1998. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on March 3, 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 January 20, 1998 from the district administrator of the Pittsville School District. The letter advised that a hearing would be held on February 2, 1998 which could result in the pupil's expulsion from the School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged Nicholas admitted to selling prescription medication to another student while in a drug free school zone. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing and copy of the manifestation determination hearing report are also part of the record.

The hearing was held in closed session on February 2, 1998. 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. A copy of a manifestation determination hearing report was apparently used by the board. 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. Pursuant to the manifestation determination hearing report, the school board also found that the misconduct was related to Nicholas' exceptional educational need (EEN). 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 February 2, 1998, was mailed separately to the pupil and his parents. The order stated Nicholas was expelled until May 29, 1998 with the opportunity for conditional "probationary" admission on March 2, 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 two issues. The pupil, by his attorney Jeffrey Spitzer-Resnick, filed a brief concerning this appeal. The school district board of education did not file a brief or response. The first issue raised by the pupil challenges the legality of the expulsion because the pupil's misconduct was a manifestation of his disability. Nicholas was identified by the school as disabled due to his Attention Deficit Hyperactive Disorder (ADHD). The school principal, school psychologist, Nicholas and Nicholas' parents met to conduct a manifestation hearing on January 28, 1998. It was determined at that hearing that Nicholas' act of selling prescription medication at school was a manifestation of his disability. Despite this determination, the school district administration expelled Nicholas.

The State Superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally 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).

However, 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). In

this case, the board ignored the manifestation determination team's finding that Nicholas' behavior was a manifestation of his Attention Deficit Hyperactive Disorder as well as its own finding that Nicholas' behavior was related to his EEN. By expelling Nicholas, the board has caused a change of placement without affording Nicholas the required due process under IDEA 42 USC 1400 et.seq. and subchapter V of Chapter 115, Wisconsin Statutes. See *Honig v. Doe*, 108 S. Ct. 592, 604-605 (1988). In light of this clear violation of well established law, I am required to reverse the expulsion.

The second issue raised by the pupil attacks the legality of a condition for early readmission. As I have reversed the expulsion, the issue regarding conditions of early or probationary readmission is moot and will not be addressed in this decision. See *In the Matter of K.H.*, 98 Wis. 2d 295, 300, 296 N.W. 2d 746 (1980).

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I therefore reverse this expulsion.

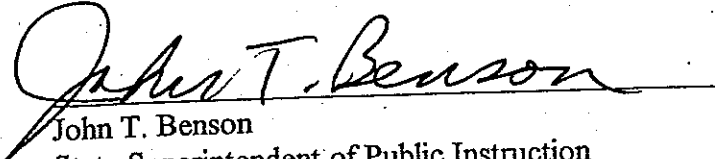
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nicholas Z [REDACTED] by the Pittsville School District Board of Education is reversed. It is further order that Nicholas be immediately reinstated and that the expulsion be removed from his record

Dated this 24th day of April, 1998.


John T. Benson
State Superintendent of Public Instruction

