

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Erin R. [REDACTED]</p> <p>by the Hayward Community School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-22</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 March 10, 1998 order of the Hayward Community School District Board of Education to expel the above named pupil from the Hayward Community School District for the 1997-98 school year with the opportunity for conditional readmission on March 9, 1998. It also ordered that the expulsion be expunged from her record at the end of the 1997-98 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on April 6, 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 from the district administrator of the Hayward Community School District. The letter advised that a hearing would be held on March 5, 1998 which could result in the pupil's expulsion from the Hayward Community 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 at school or under the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged that Erin possessed and consumed alcohol while on a spectator bus transporting students to a basketball game. 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 March 5, 1998. 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 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 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 March 10, 1998, was mailed separately to the pupil and her parents. The order stated the pupil was expelled for the 1997-98 school year with the opportunity for conditional readmission on March 9, 1998. It also ordered that the expulsion be expunged from her record at the end 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.

On May 4, 1998 the department of public instruction received correspondence from the pupil's father, Eugene R. [REDACTED]. Mr. R. [REDACTED] indicated that he wished to withdraw his appeal of the expulsion. Based upon Mr. R. [REDACTED]'s request, the appeal is dismissed and the expulsion is affirmed.


CONCLUSIONS OF LAW

Based upon the withdrawal of the appeal by the pupil, the appeal is dismissed and the expulsion is affirmed.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Erin R. [REDACTED] by the Hayward Community School District Board of Education is affirmed.

Dated this 12th day of May, 1998.



John T. Benson
State Superintendent of Public Instruction