

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Jamie B [REDACTED] by the Barron School District Board of Education</p>	<p>DECISION AND ORDER 97/98 EX 18</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 2, 1998 order of the Barron School District Board of Education to expel the above named pupil from the Barron School District through the end of the first semester of the 1998-99 academic year, subject to his legal right, consistent with his status as a pupil with exceptional educational needs, to a free appropriate public education within the meaning of the IDEA. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on March 19, 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 February 24, 1998 from the district administrator of the Barron School District. The letter advised that a hearing would be held on March 2, 1998, which could result in the pupil's expulsion from the Barron 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 possession and use of Ritalin on school premises. 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 2, 1998. The pupil, his mother and his foster parents 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 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 9, 1998, was mailed separately to the pupil and his foster parents. A copy of the order was mailed to the pupil's mother on March 24, 1998. The order stated the pupil was expelled through the end of the first semester of the 1998-99 academic year, subject to his legal right, consistent with his status as a pupil with exceptional educational needs, to a free appropriate public education within the meaning of the IDEA.

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 four issues which require consideration. The parent alleges that she was not notified of the Manifestation hearing that occurred on February 23, 1998; that the pupil was denied his right to present witnesses at the expulsion hearing; that the hearing was closed, despite the pupil's request for an open hearing; and, that the mother did not receive the order of expulsion nor was she given notice of the appeal rights.

The first allegation of the mother concerns the notice that was provided for the manifestation hearing that was held prior to the expulsion hearing. As it relates to review of the application of special education laws, 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). Furthermore, even if the superintendent did review this circumstances and assumes that the mother did not receive notice of the hearing, it is apparent from the record that the mother did attend the manifestation hearing. Thus, even if there were a violation, it had no prejudicial effect on the pupil.

Secondly, the mother alleges that she and Jamie were informed that Jamie's social workers were told they could not participate in the expulsion hearing. This statement was allegedly made at the manifestation hearing. At the expulsion hearing, Vita Sherry, District Administrator, the

person who allegedly told them that the social workers could not testify, denied making that statement. The board, however, did not make a factual determination whether or not this statement was made. In light of the apparent confusion, the board's attorney gave Jamie an option of postponing the hearing for two days so that these witnesses could be present or reading into the record a letter of information and recommendation written by these witnesses. Jamie and his representatives chose to continue with the hearing and submitted the letter written by the witnesses. Through his foster parents and mother, Jamie conceded that the letter contained the relevant information. Based upon this choice, the board proceeded. This strategic decision by Jamie waives any argument he had regarding the inability to present witnesses. Furthermore, the pupil was not prejudiced by the fact that these witnesses did not testify as the pupil conceded that the letter contained all the relevant information. Thus, I find no procedural violation.

Thirdly, the mother alleges that the expulsion hearing was closed contrary to Jamie's demand for an open hearing. The procedures used by the board comply with sec. 19.85(1)(f), Stats. and are consistent with previous holdings of the state superintendent. 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). Therefore, there was no violation of the pupil's right to a closed hearing.

Finally, the parent alleges that she did not receive a copy of the board's expulsion order nor was she notified of Jamie's appeal rights. First, I find that the mother was advised of Jamie's appeal rights. In the "notice of expulsion hearing" the appeal rights were clearly stated.

"If the board orders the expulsion of the pupil, the school District Clerk shall mail a copy of the Order to the pupil and, if the pupil is a minor, to the pupil's parent or guardian. The expelled pupil, or if the pupil is a minor, the pupil's parent or guardian may appeal the Board's decision to the Wisconsin Department of Public Instruction. If the decision is appealed to the Department, within 60 days after the date on which the Department receives the appeal, the Department shall review the decision and shall, upon review, approve, reverse or modify the decision. The decision of the Board shall be enforced while the Department reviews the Board's decision. An appeal from the decision of the Department may be taken within 30 days to the Circuit Court for Barron County."

The record is clear that the mother received the notice of expulsion hearing that contained the appellate rights, as required by sec. 120.13(c)(3), Stats. Regarding her allegation that she did not receive the board's expulsion order, the record indicates that the order was sent separately to Jamie and his foster parents. The district concedes that it did not send an order to Jamie's mother until March 24, 1998.

My predecessor has previously found that when a pupil lives with a foster parent, the school may send the notice of expulsion hearing and order to the foster parent, rather than the parent. See *Randy H. v. Central/Westosha School District Board of Education*, Decision and Order 206 (April 6, 1993), citing *Nathan N. v. Hudson School District Board of Education*, Decision and Order no. 163 (June 5, 1989). Furthermore, even if the school district did have an obligation to mail the order to the mother in this case, the remedial action taken by the district on March 24, 1998 cures that error. See *Adam C. v. Evansville Community School District Board of Education*, Decision and Order No. 340 (November 26, 1997).

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

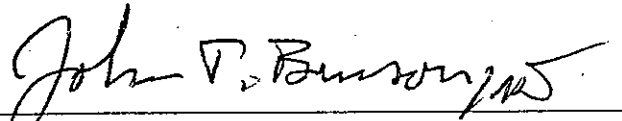
CONCLUSIONS OF LAW

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 Jamie B. [REDACTED] by the Barron School District Board of Education is affirmed.

Dated this 14th day of May, 1998.



John T. Benson
State Superintendent of Public Instruction