

THE STATE OF WISCONSIN  
BEFORE  
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of<br/><br/>Stacey R. [REDACTED]<br/><br/>by the Milwaukee School District<br/>Board of Education</p> | <p>DECISION AND ORDER<br/>97/98/EX-23</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 17, 1998 order of the independent hearing panel, affirmed by the school board on March 25, 1998, to expel the above named pupil from the Milwaukee School District until April 6, 1998. This appeal was filed by the pupil's parent 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 March 4, 1998 from the Student Services Coordinator of the Milwaukee School District. The letter advised

that a hearing would be held on March 11, 1998 which could result in the pupil's expulsion from the Milwaukee School District. The letter was sent separately to the pupil and her parent by messenger service and by regular 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 Stacey was in possession of a knife at school on February 17, 1998. A transcript of the hearing is also part of the record.

The hearing was held in closed session on March 11, 1998. The pupil and her parents appeared at the hearing without counsel, but with the assistance of a lay advocate, Tom Phillipson. 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 independent hearing panel deliberated in closed session. The panel found that 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. 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 panel, dated March 17, 1998, affirmed by the school board on March 25, 1998, was mailed separately to the pupil and her parents. The order stated the pupil was expelled until April 6, 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.

In her appeal letter, the mother urges the State Superintendent to overturn the expulsion because she felt the school district was not concerned with what happened or the reasons for the incident.<sup>1</sup> My review is limited to ensuring that the school district complied with all procedural requirements. 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 120.13(1)(c), Wis. Stats. *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M v. West*

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<sup>1</sup> The mother wrote a second letter to the State Superintendent on May 11, 1998. This letter does not raise any arguments or issues which are reviewable by the State Superintendent. Her questions and concerns will be addressed in a letter under separate cover.

*Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Tony R v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

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

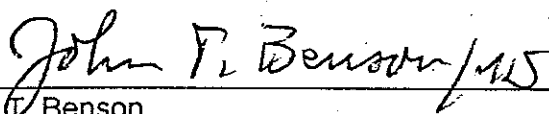
#### CONCLUSIONS OF LAW

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 Stacey R. [REDACTED] by the Milwaukee School District Board of Education is affirmed.

Dated this 1st day of June, 1998.

  
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John P. Benson  
State Superintendent of Public Instruction