THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| In the Matter of the Expulsion of<br>Jason G[redacted]<br>by the Greenfield School District Board of Education | DECISION AND ORDER<br>97/98-EX-25 |

## 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 30, 1998 order of the Greenfield School District Board of Education to expel the above named pupil from the Greenfield School District until June 9, 1999. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on April 15, 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 23, 1998 from the district administrator of the Greenfield School District. The letter advised that a hearing would be held on March 30, 1998 which could result in the pupil's expulsion from the Greenfield School District. The letter was sent separately to the pupil and his parents 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, repeatedly refused or neglected to obey school rules and engaged in conduct that disrupts the ability of school authorities to maintain order or an educational atmosphere at school. The letter specifically alleged numerous after-school, in-house and house detentions and absences due to tardiness or truancy. An audio tape of the expulsion hearing is also part of the record.

The hearing was held in closed session on March 30, 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. 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 and engaged in conduct that disrupts the ability of school authorities to maintain order or an educational atmosphere at school.[1] The school board further found that the interests of the school demand the student's

[1] The board found that Jason engaged in conduct that disrupts the ability of school authorities to maintain order or an educational atmosphere at school, however, this finding is superfluous given that the board found he repeatedly refused or neglected to obey school rules. Sec. 120.13(1)(c)2., Stats. is limited to circumstances where the conduct does not qualify for expulsion under sec. 120.13(1)(c)1., Stats. Furthermore, if a school district relies upon sec. 120.13(1)(c)2., Stats., to expel a pupil, two additional findings must be made by the board: That the pupil is at least 16 years of age and that the conduct was repeated. Because the board made all appropriate findings under sec. 120.13(1)(c)1., Stats., the additional grounds under subd. 2. is moot, therefore, I decline to decide whether the findings and record are adequate to support the expulsion under 120.13(1)(c)2., Stats.

expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated March 30, 1998, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until June 9, 1999.

## 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 several issues which require consideration. First, the pupil's parent alleges that the administration did not conduct a "formal" investigation into

sexual harassment charges made by a student against Jason and that a written report regarding the investigation was not prepared and submitted to the board. The pupil's mother's reliance on this policy is irrelevant to the expulsion procedure and beyond the scope of my review. See *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995)., limiting review of expulsion decisions to procedures at the expulsion hearing. Furthermore, the sexual harassment procedures are procedures designed to insure adequate investigation of harassment charges so that the administration could respond appropriately to harassment charges and maintain a safe environment for all students and staff. Whether or not a written report was prepared is similarly irrelevant to the expulsion hearing.

Secondly, the pupil's parent alleges, in essence, that there was insufficient evidence of the sexual harassment to support the expulsion. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Daniel A. v. Mauston School District Board of Education,* Decision and Order No. 324 (May 8, 1997) *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

The mother bases her allegation upon the fact that the board heard only hearsay regarding these allegations. I have repeatedly found that a school board is permitted to

consider and base its decision upon the testimony of a school official who relates the results of his investigation, including the statements of other people, when there are factors establishing the reliability and probative value of such testimony. *Carlos M. v. West Allis-West Milwaukee School District Board of Education,* Decision and Order No. 242 (December 21, 1994); *Joshua S. v. D.C. Everest School District Board of Education,* Decision and Order No. 170 (June 22, 1990); *John C. B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983).

In support of the recommendation for expulsion, the administration presented testimony from the High School Principal, Dr. Kery Kafka and the Assistant Principal, Mr. Peter Vlaj. At the hearing, the board was informed of the numerous disciplinary actions taken against Jason, a 16 year old 10th grader at Greenfield High School, and the reasons for these actions. The most final suspension, resulting in the expulsion hearing, was issued on or about March 11. This suspension was the result of an allegation that he sexually harassed a female student on March 4, 1998 and subsequently disrupted school, contrary to the rules, on a daily basis between March 4 and March 9, 1998. Mr. Vlaj testified that a female student reported to her guidance counselor that Jason made sexually inappropriate and harassing statements to her while at school. He also read the letter summarizing the student's complaints which was written by the guidance counselor. The board also questioned Jason about the harassment. While he denied making the statements attributed to him by the complainant, he admitted to making statements deemed by the board as inappropriate.[2] The board also received testimony regarding a "contract" which was signed by Jason, his mother and school authorities on January 6, 1998. This contract was an alternative to expulsion at that time. Mr. Vlaj and Dr. Kafka testified to the events leading up to the contract included school rule violations such as leaving school without permission and smoking marijuana, threatening and shoving a

[2] This characterization the board deemed the comments as inappropriate is based upon comments made

student, disruption in class and in the suspension room, theft, lying about why he wasn't in school, and other inappropriate behavior. Finally, the board received testimony of various violations of this contract, in addition to his behavior between March 4 and 9, 1998. Based upon the record, I find that the board's findings are sustained by a reasonable view of the evidence.

The pupil's mother also alleges that the board did not acknowledge Jason's present progress in the area of attendance, academic achievement and effort. The board was presented with evidence of current and past attendance records, academic records and behavior records. 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 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).

Finally, the mother alleges that the administration did not conduct an M-team as requested by her. 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 Jason was identified as an EEN student, thus this issue is beyond the scope of this review.

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 Jason G[redacted] by the Greenfield School District Board of Education is affirmed.

Dated this 12th day of June, 1998.

John T. Benson

John T. Benson
State Superintendent of Public Instruction