

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Elliott G. [REDACTED]

by the Marshfield School District
Board of Education

DECISION AND ORDER
97/98-EX-27

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 24, 1998 order of the Marshfield School District Board of Education to expel the above named pupil from the Marshfield School District until January 21, 1999, with an opportunity for early readmission provided some conditions are met by the pupil. This appeal was filed by the pupil's father and was received by the Department of Public Instruction on May 7, 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 13, 1998 from the district administrator of the Marshfield School District. The letter advised that a hearing would be held on March 23, 1998 which could result in the pupil's expulsion from the Marshfield 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 and that he repeatedly refused or neglected to obey school rules. The letter specifically alleged that Elliot engaged in repeated misconduct between September 2, 1997 and March 3, 1998, including not obeying classroom rules, not following directions from school staff, fighting with other students, refusing to serve detention and being tardy and truant. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on March 23, 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 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 he repeatedly refused or neglected to obey 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 24, 1998, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until January 21, 1999, with an opportunity for early readmission provided some conditions are met by the pupil.

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 one issue which requires consideration. The father asks that the expulsion be overturned because Elliot was not tested for special education needs. My authority to review expulsion decisions is, however, limited as outlined above. In the case of a pupil with an identified EEN, the state superintendent has reversed expulsion decisions in which the board failed to consider whether the pupil's handicapping condition was related to the misconduct. With regard to all other areas of special education law, as well as s.504, an expulsion appeal is not the appropriate context in which to challenge the district's actions. See e.g. *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996); *Joseph M. v. Unity School District Board of Education*, Decision and Order No. 292 (May 24, 1996); *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985). The parents may choose to pursue these arguments under the specific procedures available under Subchapter V of Chapter. 115, Wis. Stats. and under s.504. The parents may contact district staff or my staff for further information on procedures and appeal rights under those provisions of law.

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

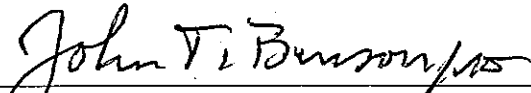
CONCLUSIONS OF LAW

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 Elliott G [REDACTED] by the Marshfield School District Board of Education is affirmed.

Dated this 2nd day of July, 1998.



John T. Benson
State Superintendent of Public Instruction