

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Jesse M. [REDACTED]</p> <p>by the Tri County Area School District Board of Education</p>	<p>DECISION AND ORDER 98/99-EX-15</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 31, 1999 order of the Tri County Area School District Board of Education to expel the above-named pupil, an 8th grader, from the Tri County Area School District until June 1, 1999. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on April 15, 1999.

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 22, 1999, from the district administrator of the Tri County Area School District. The letter advised that a hearing would be held on March 31, 1999 that could result in the pupil's expulsion from the Tri County Area School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil repeatedly refused or neglected to follow school rules. The letter specifically alleged that Jesse engaged in misbehavior causing his removal from the middle school play and refused to follow orders of two staff members when asked to sit and behave on March 19, 1999. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on March 31, 1999. 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. 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 31, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until June 1, 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 that 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 three issues that require consideration.¹ First, the mother alleges that the school district failed to follow through with requested special education

¹ The parent also raises a question about the suspension procedures used by the district. The state superintendent does not have authority to review suspension procedures. See *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995). Furthermore, after

needs. The minutes of the hearing indicate that Jesse was evaluated for special education needs in 7th grade. He was found not to need special education services. 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 special education need.

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). As there is no evidence in the record that Jesse was identified as a child with a disability, thus this issue is beyond the scope of this review.

Secondly, the parent alleges that the expulsion was discriminatory.² She claims that other students engaged in far worse behavior and were not expelled. The issue of the evenness and

reviewing the disciplinary record that was submitted to the board, it is apparent that the parent was given opportunities to discuss the suspensions at the time they were given. The expulsion hearing minutes also reveal that she was given these opportunities but did not take advantage of them.

² If the pupil believes he has been discriminated against because of his race, sex, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental emotional or learning disability, the pupil must utilize the district's non-discrimination complaint procedures. Only after

fairness of disciplinary measures imposed by schools is an issue the State Superintendent is without authority to address. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Douglas S v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989). and *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997).

Finally, the parent complains that alternative school options were not offered to Jesse. While the Department of Public Instruction encourages districts to provide alternative education to expelled students, such a program is not required. *Dale C. v. Central/Westosha School District Board of Education*, Decision and Order No. 137 (May 15, 1986); *Richard S. v. Wisconsin Rapids School District Board of Education*, Decision and Order No. 145 (September 5, 1986); *Brandon G. v. West DePere School District Board of Education*, Decision and Order No. 160 (April 27, 1989); *Barry W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 220 (March 7, 1994).

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

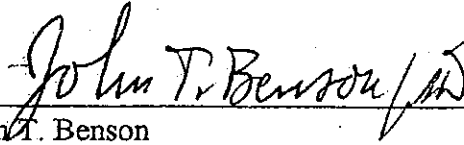
Based upon my review of the record in this case and the findings set out above, I conclude that the school board complied with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

exhausting those procedures may the pupil appeal to the State Superintendent pursuant to sec. 118.13, Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jesse M. [REDACTED] by the Tri County Area School District Board of Education is affirmed.

Dated this 11th day of June, 1999.



John T. Benson
State Superintendent of Public Instruction