

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Jessica G. by the Chippewa Falls Area Unified School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 99/00 EX 06</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), Stats., from the order of the Chippewa Falls Area Unified School District Board of Education to expel the above-named 7th grade pupil from the Chippewa Falls Area Unified School District. This appeal was filed by the pupil and was received by the Department of Public Instruction on January 21, 2000.

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), 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 November 8, 1999, from the district administrator of the Chippewa Falls Area Unified School District. The letter advised that a hearing would be held on November 22, 1999 that could result in the pupil's expulsion, until her 21st birthday from the Chippewa Falls Area Unified School District. The letter was sent separately to the pupil and her parents by certified mail. The letter alleged that the pupil engaged in conduct while at school that endangered the health, or safety of others. The district also alleged that Jessica violated the school board policy regarding use of alcohol and/or controlled substances. The letter specifically alleged that at approximately 8:30 am on November 3, 1999, Jessica distributed a mixture of several alcoholic substances to another student. Minutes of the school board expulsion hearing¹ and an audiotape of the expulsion hearing are also part of the record.

The hearing was held in closed session on November 22, 1999. The pupil and her parents appeared at the hearing represented by an attorney. 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.

¹ While there is no statutory explanation of how detailed hearing minutes must be, previous decisions by the State Superintendent have outlined minimum requirements. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996). The minutes do not provide this detail, however, the record is supplemented by the audiotape, which was very good quality. Therefore the record is sufficient for review. However, I caution school districts about relying on an audiotape as the only detailed record of the hearing. Unfortunately, many audiotapes are inaudible. I suggest that if the board does not have the hearing transcribed by a court reporter that the board keep minutes as described in this footnote to avoid any problems on review.

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 December 2, 1999, was mailed separately to the pupil and her parents. The order stated the pupil was expelled through December 17, 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), 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), 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.L.*, 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 that requires consideration. The pupil alleges that she did not receive a fair hearing. On November 22, 1999, the board heard four expulsion cases. At least one of those hearings involved Jessica's "cohort". Jessica claims that the board heard evidence in the cohort's hearing that Jessica was not privy to, therefore there was unfair prejudice to Jessica.

Jessica was accused of bringing a soda bottle containing an alcoholic mixture to school on November 3. Jessica admitted that she did this. She also admitted that she gave it to another student at school that morning. That student then gave it to another student. The school received a tip, investigated and found the bottle in a student's locker.

At one of the cohort's hearings, it appears that the cohort tried to claim that he did not know the bottle contained alcohol. According to the tape of Jessica's expulsion hearing, the board did not believe this pupil's contention. This evidence was described at Jessica's hearing by the school district. Jessica was given an opportunity to ask the school district about this claim and to testify about this fact. The school board's findings do not, in any way, refer to the evidence presented at the cohort's hearing. The findings are restricted to Jessica's hearing, and especially Jessica's admission.

There is no evidence that the board relied on improper or inadmissible evidence. It is not uncommon for decision-makers or fact finders to have heard a "codefendant's" case. The tape of the hearing makes it very clear, however, that the board did not consider any evidence from the

cohort's case when deciding Jessica's case. Jessica received a fair hearing. She was given ample opportunity to present evidence and question the district's witness.

In reviewing the record in this case, I find the school district did comply 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 did comply with all of the procedural requirements of sec. 120.13(1)(c), Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jessica by the Chippewa Falls Area Unified School District Board of Education is affirmed.

Dated at Madison, Wisconsin on March 15, 2000.



John T. Benson
State Superintendent of Public Instruction