

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Laura S. [redacted] by: Viroqua Area School District Board of Education</p>	<p>DECISION AND ORDER Appeal No.: 99/00 EX 07</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 Viroqua Area School District Board of Education to expel the above-named seventh-grade pupil from the Viroqua Area School District. This appeal was filed by the pupil and was received by the Department of Public Instruction on February 9, 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 October 13, 1999, from the district administrator of the Viroqua Area School District. The letter advised that a hearing would be held on October 18, 1999 that could result in the pupil's expulsion from the Viroqua Area School District until her 21st birthday. The letter was sent separately to the pupil and her aunt by personal service. The letter alleged that on or about September 20, 1999 the pupil engaged in conduct while at school or under the supervision of school authority that endangered the property, health, or safety of others. The letter specifically alleged that Laura threatened to kill two female middle school students. Minutes of the school board expulsion hearing and an audio-tape of the expulsion hearing are part of the record.

The hearing was held in closed session on October 18, 1999. The pupil and her aunt appeared at the hearing with their attorney. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her attorney 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 that the pupil did engage in conduct while at school or while under the supervision of a school authority that 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 the school board, dated October 20, 1999, was mailed separately to the pupil and her aunt. The order stated the pupil was expelled for the balance of the 1999-2000 school year and for the 2000-2001¹ school year with an option to request re-entry under specified conditions and that such a request would be considered by the board.

¹ The first paragraph of the "Order" section of the Findings and Order of Pupil Expulsion contains a typographical error in that it states the pupil is expelled "...and the 2000-2201 school year" (emphasis added). The minutes of the closed session clearly state that the recommendation was for the expulsion to be for the 1999-2000 and 2000-2001 school years and the board agreed to a two-year expulsion. The board should correct its order to reflect the board's actual decision.

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 that 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.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 requiring consideration. The pupil's aunt alleges the school board made an error but did not specify how it erred. The aunt alleged Laura had never been in trouble prior to this incident. Essentially, the aunt is alleging that the punishment is excessive and overly harsh.²

² She also alleged that Laura was being academically punished, because the board did not readmit Laura to school after her psychologist reported that she did not represent a threat to herself or others. This is a challenge to the school board's decision to deny Laura early readmission. This is not an expulsion decision under 120.13(1)(c), Stats. Therefore, I do not have authority to review this decision.

Laura verbally threatened to kill two fellow students, and she also threatened to injure or cause trouble for other students. Four of the threatened pupils reported the threats to school guidance counselor John Schneider. He reported the threats to the police. In searching Laura's locker, a notebook with two hit lists of persons to torture and a drawing of a longhaired girl with a knife and gun were found. The following day, a Viroqua police officer interviewed Laura and searched her book bag. A cased letter opener was found. Laura denied that the letter opener was to be used as a weapon. Laura said her notebook and drawings were tactics she used to deal with her anger in a way that helped her to not act out.

The state superintendent has repeatedly held that harshness and severity of discipline are matters that lie within the discretion of the school board as long as all the procedural requirements of sec. 120.13(1)(c), Stats., are complied with. *Jesse P. v. Hustisford School District Board of Education*, Decision and Order No. 293 (June 10, 1996); *Travis M. v. Tri County School District Board of Education*, Decision and Order No. 241 (December 8, 1994); and *Kristin J.P. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992). Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, sec.3, the state superintendent has consistently declined to modify the length of expulsions. *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see the extraordinary circumstance or procedural violation that cause me to modify the pupil's expulsion period.

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

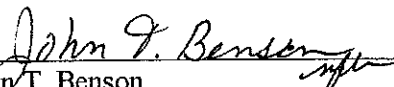
CONCLUSIONS OF LAW

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), Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Laura S _____ by the Viroqua Area School District Board of Education is affirmed.

Dated at Madison, Wisconsin on March 31, 2000.



John T. Benson
State Superintendent of Public Instruction

APPEAL RIGHTS

Section 120.13(1)(c), Stats., specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of sec. 227.53, Stats., is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.