

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Michael M

by Appleton Area School District
Board of Education

DECISION AND ORDER

Appeal No.: 99/00 EX 09

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 Appleton Area School District Board of Education to expel the above-named 18-year-old pupil from the Appleton Area School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 28, 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 January 3, 2000, from the assistant superintendent of the Appleton Area School District. The letter advised that a hearing would be held on January 10, 2000 that could result in the pupil's expulsion from the Appleton Area School District. The letter was mailed separately to the pupil and his parents. 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 at school; endangered the property, health, or safety of a school authority or endangered the property, health or safety of any employee or school board member of the school district; and repeatedly refused or neglected to obey school rules. The letter specifically alleged that on October 13, 1998, the pupil lied to staff members and acted inappropriately; on January 19, 1999, the pupil stole another student's belongings; and on December 17, 1999, the pupil engaged in repeated acts of racial graffiti and vandalism on school property. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.

The hearing was held in closed session on January 10, 2000. The pupil and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion and withdrew the third ground for expulsion, i.e., the repeated refusal or neglect to obey school rules. The pupil and his mother were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

The school board deliberated in closed session after the hearing. The board found that the pupil is a child with a disability, and that a manifestation determination hearing was held. The

pupil's actions were determined not to be a manifestation of his disability. The board found the pupil engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others. The board also found that the pupil endangered the property, health, or safety of any employee or school board member of the school district. 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 January 24, 2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 2000-2001 school year.

DISCUSSION

School districts are limited purpose municipal corporations and have only such powers as conferred specifically by statute or necessarily implied therefrom. *Iverson v. Union Free High School District*, 186 Wis. 342, 353, 202 NW 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 NW 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 letters in this case raise two issues that require consideration. First, Michael and his mother challenge the severity of the punishment. Michael admitted to Officer Neal Rabas that he wrote the graffiti. Michael claimed his reason for writing the graffiti was that it was the only way he could express his anger and frustration over the threats and being "picked on" by the Hmong students. However, the hearing record indicated that the school administration was not given prior notice of the threats.¹ Michael did not indicate any remorse for his conduct either when questioned or at the expulsion hearing.

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

¹ In their appeal letters, the pupil and his mother raise issues about threats to the pupil and his brother, vandalism to the family car, and materials purporting to show the alleged racial tensions and harassment at the school. There is nothing in the record to indicate this evidence was presented to the school board at the expulsion hearing. Therefore, I will not consider this material as part of the expulsion record. See *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order 383 (May 27, 1999); *Jeffrey L. v. New Lisbon School District Board of Education*, Decision and Order No. 319 (April 8, 1997); *Matthew M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996).

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.

Second, Michael's mother questioned the length of time it took to identify her son's disability, to put together a program to address his needs, and the quantity of post-expulsion services that were offered. Michael is a child with a disability, and there was a manifestation determination hearing held in this matter which determined that Michael's conduct was not a manifestation of his disability. Other issues concerning Michael's special education needs are beyond the scope of an expulsion appeal. Michael must avail himself of the due process appeal procedures provided under sub-chapter V, Chapter 115, Wis. Stats., and PI Chapter 11, Wis. Admin. Code. See *John Michael N. v. Random Lake School District Board of Education*, Decision and Order No. 331 (August 5, 1997); *Matthew C. M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996); and *Jessie M. K. v. Tri County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996).

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

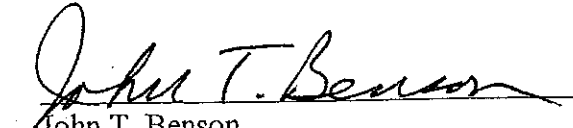
CONCLUSIONS OF LAW

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 Michael M. by the Appleton Area School District Board of Education is affirmed.

Dated at Madison, Wisconsin on April 25, 2000.



John T. Benson
State Superintendent of Public Instruction