

THE STATE OF WISCONSIN  
BEFORE  
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  Matthew F  by East Troy Community School District Board of Education	DECISION AND ORDER  Appeal No.: 99/00 EX 18
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**NATURE OF THE APPEAL**

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the East Troy Community School District Board of Education to expel the above-named eighth-grade pupil from the East Troy Community School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 3, 2000.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 April 6, 2000, from the district administrator of the East Troy Community School District. The letter advised that a hearing would be held on April 12, 2000 that could result in the pupil's expulsion from the East Troy Community School District through the pupil's 21<sup>st</sup> birthday. The letter was sent separately to the pupil and his

parents by 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 the pupil repeatedly refused or neglected to obey school rules. The letter specifically alleged numerous instances of the pupil swearing at teachers or others, being disruptive in class, failing to serve detentions, threatening or harassing other students, damaging school or personal property, as well as one allegation of theft and one allegation of tobacco use. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are part of the record.<sup>1</sup>

The hearing was held in closed session on April 12, 2000. Matt and his mother appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. Matt and his mother 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 the pupil had 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 April 12, 2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through November 7, 2000.

## 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

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<sup>1</sup> The pupil submitted a copy of a petition, signed by a number of people, stating their belief that the punishment in this matter was too severe. There is nothing in the record to indicate the copies of this petition were presented to the board at the hearing. Therefore, I will not consider this material as part of the record. See *Michael M. v. Appleton Area School District Board of Education*, Decision and Order No. 411 (April 25, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); and *Matthew M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996).

§ 120.13(1)(c), 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 § 120.13(1)(c). 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. First, the pupil and his mother challenge the severity of the punishment. 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). Matt and his mother do not disagree that Matt was guilty of the conduct alleged and that he bears the responsibility for his actions. They are concerned because the duration of the expulsion will require Matt to enter ninth grade at the beginning of the second quarter, which may cause Matt additional problems in dealing with the new situations and requirements of high school. The minutes of the expulsion hearing reflect that the board discussed this issue during its deliberations. The board concluded its deliberations, decided to expel Matt,

and decided the duration of the expulsion. 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 an extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

Second, Matt's mother alleges she was told by the school principal that they did not need an attorney at the hearing because it was unlikely the board would expel the pupil this late in the school year. This argument was only raised in the appeal letter. Whether or not Matt's mother was told she did not need a lawyer cannot be determined from the record. The notice of expulsion hearing advised Matt and his mother of their right to be represented by a lawyer. Furthermore, neither Matt nor his mother complained of this at the expulsion hearing, and they did not request an adjournment so they could retain an attorney. Generally, issues not raised before the board cannot be raised for the first time on appeal. See *Kyle J. W. v. Viroqua Area School District Board of Education*, Decision and Order No. 413 (April 27, 2000); *Matthew R. v. Burlington Area School District Board of Education*, Decision and Order No. 383 (May 27, 1999); and *Troy R. v. Lake Geneva JI School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

Third, Matt's mother alleges one member of the board may have been biased against Matt because of an earlier disagreement between Matt and the board member. The mother does not name this person, and there is no evidence in the record that this issue was presented to the board. Generally, issues not brought before the board cannot be raised for the first time on appeal. Furthermore, the law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them, and that they will act fairly, impartially, and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this

presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances that would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303, October 17, 1996; *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130, (May 10, 1985).

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

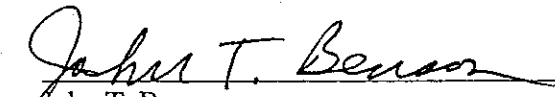
#### CONCLUSIONS OF LAW

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 § 120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of Matthew F. \_\_\_\_\_ by the East Troy Community School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on 6/26/, 2000.

  
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John T. Benson  
State Superintendent of Public Instruction