

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Brian M</p> <p>by Lodi School District Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 99/00 EX 23</p>
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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 Lodi School District Board of Education to expel the above-named ninth-grade pupil from the Lodi School District. This appeal was filed by the pupil and received by the Department of Public Instruction on August 25, 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 June 19, 2000, from the district administrator of the Lodi School District. The letter advised a hearing would be

held on June 27, 2000 that could result in the pupil's expulsion from the Lodi School District through his 21<sup>st</sup> birthday. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged 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 Brian possessed marijuana on school property on May 9, 2000. An audiotape of the expulsion hearing and copies of exhibits used at the hearing are part of the record.

The hearing was held in closed session on June 27, 2000. The pupil and his parents appeared at the hearing represented by Attorney Willie Nunnery. 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 July 6, 2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until the beginning of the fourth quarter of the 2000-2001 school year. The board also provided for conditional early readmission for the beginning of the second semester of the 2000-2001 school year. Because Brian is identified as a child with a disability, the board also ordered that appropriate educational services be provided to Brian at an off-campus site during the period of expulsion.

## 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 § 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 in this case raises one issue, whether or not the expulsion violated the state and federal laws for special education students. Upon Mr. Nunnery's request, a status conference was held between the school district's attorney, David Rohrer, Mr. Nunnery and the department. At the status conference, Mr. Nunnery was advised by the department that an

expulsion appeal under §120.13(1)(c) does not examine whether the expulsion complied with special education laws. Mr. Nunnery was advised that there are separate procedures for special education appeals contained in subchapter V of the chapter 115. In a report summarizing the conference call, Mr. Nunnery was again advised of the proper procedures for appealing a special education decision.

The state superintendent has determined that an expulsion appeal is generally not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is generally beyond the scope of § 120.13(1)(c). *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).

However, with regard to a pupil with an *identified* special 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 identified as a child with a disability.

Brian is identified as a child with a disability. The school district conducted a manifestation determination. As a result of the manifestation determination review, the IEP team found that Brian's conduct was not a manifestation of his disability. I do not have authority, in an expulsion appeal, to examine the appropriateness of this manifestation determination. See *John M. N. v. Random Lake School District Board of Education*, Decision and Order No. 331

(August 5, 1997); *Jesse M.K. v. Tri-County Area School District Board of Education* Decision and Order No. 266 (January 2, 1996). As suggested in earlier correspondence to Mr. Nunnery, the appropriate forum for a challenge to a manifestation determination is found in § 115.80.

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.

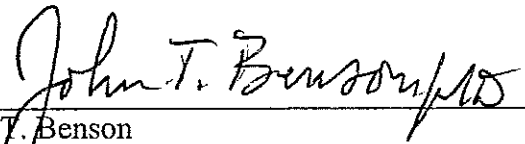
### CONCLUSIONS OF LAW

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 §120.13(1)(c).

### ORDER

IT IS THEREFORE ORDERED that the expulsion of Brian M : by the Lodi School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on October 23, 2000.

  
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John T. Benson  
State Superintendent of Public Instruction