

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>C L</p> <p>by Lodi School District Board of Education</p> | <p>DECISION AND ORDER</p> <p>Appeal No.: 08-EX-10</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 pupil from the Lodi School District. This appeal was filed by the pupil and received by the Department of Public Instruction on February 29, 2008.

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 Pupil Expulsion Hearing," dated January 18, 2008, from the district administrator of the Lodi School District. The letter advised a

hearing would be held on February 4, 2008 that could result in the pupil's expulsion from the Lodi School District through the pupil's 21st birthday. The letter was sent separately to the pupil and her parent 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. The letter specifically alleged that on January 17, 2008, the pupil endangered the safety of another student by purposefully punching two other students in the face while on School District of Lodi property.

The hearing was held in closed session on February 4, 2008. The pupil and her parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her parent 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 February 6, 2008, was mailed separately to the pupil and her parent. The order stated the pupil was expelled until her 21st birthday, with an opportunity for early readmission beginning any time after August 15, 2008. Minutes and an audiotape of the expulsion hearing are part of the record.

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 letter in this case raises one issue which requires consideration. The pupil alleges that at the time of the expulsion, she was being evaluated by an IEP team for emotional disabilities. In addition, the pupil claims that her behavior and academic performance are the result of her emotional disabilities. However, the record reflects that the pupil's parent did not

give consent to begin the pupil's special education evaluation until after the pupil was expelled. Therefore, the pupil was not being evaluated by an IEP team for emotional disabilities at the time of the expulsion. 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 Wis. Stats. § 120.13(1)(c). *Ryan S. v. Barron Area School District Board of Education*, Decision and Order No. 417 (June 9, 2000); *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); and *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Therefore, any challenges to the district's special education evaluation procedures may be addressed using special education appeal procedures. The department maintains an extensive library of materials to explain procedures related to special education complaints or appeals. These materials are easily accessible at the department's website at <http://dpi.wi.gov/sped/tm-spedctopics.html>. Or, the pupil or her parent may call the special education team at the Department of Public Instruction to get more information.

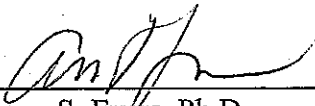
CONCLUSIONS OF LAW

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 C L by the Lodi School District Board of Education is affirmed.

Dated this 24th day of April, 2008.



Anthony S. Evers, Ph.D.
Deputy State Superintendent of Public Instruction