

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
JASON S [REDACTED]  
by the Kenosha Unified School  
District No. 1 Board of Education

DECISION  
AND  
ORDER  
93-EX-05

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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), Wis. Stats., from the order of the Kenosha Unified School District No. 1 Board of Education expelling Jason S [REDACTED] from that school district effective March 11, 1993, until August 1996. This appeal was filed by Jason's mother, Linda S [REDACTED], and was received by the Department of Public Instruction on March 31, 1993.

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), Wis. 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 interests of the school district demand that the student be expelled.

## FINDINGS OF FACT

The record contains a Notice of Hearing Regarding Possible Expulsion of Student From School dated February 25, 1993, which was properly sent to the pupil and to his mother. The Notice advised that a hearing would be held on March 10, 1993, which could result in Jason's expulsion. The Notice also incorporated an "Exhibit A," which set forth the specific allegations upon which the proposed expulsion was based. "Exhibit A" alleged that Jason had a knife in his pocket on February 8, 1993, and a pointed, dangerous ring in his pocket on February 12, 1993. The hearing was accordingly conducted in closed session on March 10, 1993. Jason and his mother appeared without counsel.

At the hearing the school district administration presented testimony supporting the alleged misconduct by the pupil. The record indicates that another student complained that Jason had threatened to "stick" her. Because of the use of that particular verb, the administration suspected that Jason possessed a knife. Jason did produce a knife from his pocket when questioned by the administration.

Four days later, the administration questioned Jason further about the knife incident. Jason agreed to a search at that time and produced a pointed ring from his pocket. According to the administration, Jason had been warned about wearing the ring at school earlier in the year.

Jason and his mother were given an opportunity to question and to respond to the administration's evidence. Jason admitted that he possessed the knife and the ring at school. He stated

that he did not realize the ring was in his pocket on February 12, 1993, or he would not have agreed to the search.

Jason also admitted that he said he would "stick" the other student referenced above, but stated that he meant he would "hit" her with his hand, not stab her with a knife. The other student was also present at the hearing, apparently at Jason's request. She testified that she understood Jason meant to "hit" her when he said "stick" her. The record does not indicate that Jason revealed the knife to the other student.

After the hearing, the school board deliberated in closed session and returned with its decision to expel Jason. A Notice of Expulsion was subsequently entered on March 11, 1993, and was properly sent to Jason and to his mother. In reaching its decision, the school board found that Jason had endangered the health and safety of others at school and repeatedly violated school rules by possessing weapons or items that could be used as weapons. The board also found that the interests of the school demanded expulsion. The Notice of Expulsion expelled Jason until August 1996. In her letter of appeal, Jason's mother complained that the period of expulsion is unduly long.

#### 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 Dist., 186 Wis. 342, 353, 202 N.W. 788 (1925). A school board's power to expel students derives from

sec. 120.13(1)(c), Wis. Stats., which establishes certain categories of offenses which may be the basis for an expulsion and sets out specific procedures which 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), Wis. Stats. In Racine Unified School Dist. 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. 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.

In reviewing the record in this case I find that the School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

In her appeal, Jason's mother challenges the length of the expulsion period as excessive. However, the State Superintendent has repeatedly ruled that the length of expulsion is within the discretion of the school board to determine. I am not authorized to review whether the period of expulsion is excessive or unduly

harsh. See e.g., Ricardo S. v. Wisconsin Rapids Board of Education, Decision and Order No. 145 (9/5/86); James M. B. v. Westosha School District Board of Education, Decision and Order No. 101 (12/22/82).

I cannot condone the pupil's conduct in this case in any way. However, as Jason's mother accurately urges in her appeal, access to education is absolutely critical to Jason as well as to all of our Wisconsin youth. I note that the Notice of Expulsion indicates that "any application for early readmittance" should be made through the Office of the Superintendent for Schools. The Notice does not include any information as to what criteria may be considered to permit early readmission. Reference to early readmission does at least imply that the district will consider such a request. I, therefore suggest that Jason and his mother pursue this possibility and that the school district share with them any information necessary to permit early readmission.

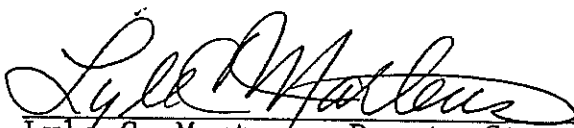
#### CONCLUSIONS OF LAW

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), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jason S [REDACTED] by the Kenosha Unified School District No. 1 Board of Education is affirmed.

Dated this 19<sup>th</sup> day of April, 1993.



Lyle C. Martens, Deputy State  
Superintendent of Public Instruction