

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

David A [REDACTED]

by the Kenosha Unified School District
No. 1 Board of Education

DECISION
AND
ORDER

93-EX-07

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 to expel David A [REDACTED] from Bradford High School from on or about May 10, 1993, until August 1994. This appeal was filed by Attorney J. W. Breitenbach on behalf of David's parents, Bruce and Janet A [REDACTED], and was received by the Department of Public Instruction on June 1, 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 from Anthony F. Bisciglia, Kenosha School District Administrator, dated April 28, 1993, which indicated that an expulsion hearing was to be held on May 6, 1993. The record also contains three affidavits of personal service showing timely and individual service of the notice upon David and his parents. In addition, the record contains an affidavit of mailing showing timely individual service by mail on the same three persons. The notice properly advised of the time and place of the expulsion hearing, and that the issues would be whether David should be expelled, whether such expulsion was in the best interest of the district, and if expulsion was to occur, what the period of expulsion would be. It further advised that the district would present evidence and witnesses to support its position. It also stated that David and his parents had the right to be represented by an attorney, the right to present witnesses and to cross-examine those testifying at the hearing with the board, and the right to a closed hearing. The notice also referred to the board's possible consideration of the pupil's complete disciplinary and academic records and the opportunity to review those prior to hearing.

Attached and incorporated in the notice was Exhibit A which contained the charges that formed the grounds for the revocation. The exhibit alleged that David's conduct had endangered the health and safety of others while he was at school or under school supervision. Three charges were outlined. The first and most recent alleged David sexually assaulted a female student during a school supervised bus trip to Orlando, Florida, April 13, 1993, with the school choir and orchestra. After she fell asleep, the

notice charges, David put his hand down the inside of her underwear and placed his finger "inside of her." The notice alleged David admitted the conduct. The second count alleged that two teachers found David with other students on the same trip, on April 14, 1993, in a motel room in Orlando with mixed alcoholic drinks. The third charge referred to an earlier incident on November 3, 1992, in which David allegedly exposed his genitals to another student in a music practice room during the orchestra class period.

The hearing was accordingly held before the board in closed session on May 6, 1993. David and both of his parents participated without counsel. The district's case was presented by Attorney Paul Wokwicz. Evidence was presented by the administration on all three charges through principal Joseph Mangi. With respect to the November 1992 incident, the evidence showed David had reported his own misconduct to a school counselor shortly after it occurred and since the girl did not report it, the district otherwise would have had no notice of it. The incident was verified with the girl through an interview. David's parents were involved. In part because the girl's parents did not wish other disciplinary action, the agreed upon disposition at that time was professional counseling for David which he was still engaged in when the incident on the bus occurred.

The evidence showed that in April 1993 the school's choir/orchestra went on a field trip to Orlando, Florida, for a music competition. The incident on the bus came to light when reported to a school counselor by the victim and another girl the day after the students had returned from Orlando. When David appeared for class that day and the victim saw him, she cried and ran out of the room. At the suggestion of her friends, the

girl agreed to go to a school counselor and explain what had happened to school authorities. District officials interviewed the girl, David, and others, and reported this to the police and social services.

The students were supervised on the trip by the two music teacher chaperons and other parent chaperons. The incident had occurred two or three hours south of Kenosha on the way to the competition. The evidence showed the girl had moved from the rear of the bus toward the front to be near another girl friend and took the seat next to David. She was on medication and fell asleep. David admitted the conduct in an interview with the principal, and at hearing admitted the girl said "No" and told him to stop. He sought however to qualify the matter by suggesting that the girl may not have been asleep, did not push his hand away, and may have delayed jumping up and running to the back of the bus. The evidence further showed David observed an "upset" look on the girl's face, and he "kind of knew . . . she was mad at what happened." The girl immediately told girl friends on the bus.

Evidence was also presented with respect to the mixed drinks episode. In an interview David had admitted participating with two other boys in mixing about a third of a bottle of alcohol with liter bottles of 50/50 soda. None had been consumed when the boys were caught. The district was preparing to suspend David for one day and was in the process of determining a period of athletic team suspension for this event when the information on the bus incident became available and these matters were then consolidated.

After Mr. Mangi was cross examined, David and his parents submitted a letter from the psychologist David had been seeing and called their pastor to testify as well as the district's Student Assistance Program coordinator, a school counselor, and David. Evidence was elicited that David had twice been screened for alcohol use but that alcohol had not been a factor in either of the sex-related incidents; that David was a B/A student, a very good athlete in more than one sport, and had been recommended for Badger Boys' State as a junior. On cross examination he admitted he did not have a close relationship with nor had he dated the girl on the bus, that he had no justification for that conduct, and even had the conduct been consensual it was not proper conduct on a school trip while under school supervision. He admitted he needed help. Prior to the November 1992 incident David had no disciplinary record.

Closing statements were submitted by both parties. Two of the seven board members recused themselves because of prior contacts with one or another person related to the case and the five remaining members convened into executive session where they unanimously voted to expel as reflected above.

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 Kenosha School District complied with all of the applicable procedural requisites. I am, therefore compelled to affirm the expulsion decision.

The notice of appeal alleges as reasons for appeal that "the period of expulsion is excessively long based upon the record made and the past record of the child and for reason of any other illegality." This is the sole express basis for appeal as no brief or other argument has been submitted on behalf of David.

Generally the Department has found that the proper duration of expulsion is a matter left to the discretion of the board. Ricardo S. by the School District of Wisconsin Rapids Board of Education, September 5, 1986, No. 145, and Jesse K. by the School

Board of Joint District No. 2 of Sun Prairie, et al., June 17, 1985, No. 131. The record here was fully developed, both with respect to the serious nature of the misconduct as well as the academic and disciplinary record of the pupil. I find no reason why the general rule should not apply here.

I find no illegality of record.

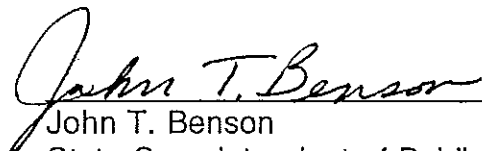
CONCLUSIONS OF LAW

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 David A. [REDACTED] by the Kenosha School District Board of Education is affirmed.

Dated this 2nd day of August, 1993.



John T. Benson
State Superintendent of Public Instruction