

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
JOHN P [REDACTED]

DECISION
AND
ORDER
93-EX-13

by the Board of Education of the School
District of West Allis-West Milwaukee, et al.

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 Board of Education of the School District of West Allis-West Milwaukee, et al. expelling John P [REDACTED] from that school district effective October 25, 1993, through the remainder of the 1993-1994 school year. This appeal was filed by John's mother, Rande Wenzel, and was received by the Department of Public Instruction on November 15, 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 expulsion hearing dated October 15, 1993, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on October 25, 1993, which could result in John's expulsion for the remainder of the 1993-1994 school year. The Notice also advised that the basis of the proposed expulsion was John's alleged repeated refusal or neglect to obey school rules during the 1993-1994 school year and set forth the specific conduct constituting such repeated rule violations.

The hearing was accordingly conducted in closed session on October 25, 1993. John and his mother appeared without counsel.

At the hearing the school district administration presented testimony and exhibits supporting the alleged misconduct by the pupil. John and his mother were given an opportunity to respond to the administration's evidence.

After the hearing, the school board deliberated in closed session and returned with its decision to expel John. An Order of Expulsion was subsequently entered on October 28, 1993, and was properly sent to John and to his parents. In reaching its decision, the school board found that John had repeatedly refused or neglected to obey school rules based on the incidents of misconduct contained in the Notice of Hearing and established at the hearing. The board also found that the interests of the school demanded expulsion. The Order of Expulsion expelled John for the remainder of the 1993-1994 school year.

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, John's mother suggests that the district has overreacted to her son's misconduct. However, the State Superintendent has repeatedly ruled that the decision to expel as well as 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).

John's mother also argues that the district did not prove the incidents of misconduct. However, evidence was presented to support the alleged incidents of misconduct. The State Superintendent will not disrupt the board's findings of fact reasonably supported by evidence in the record. See e.g., Joshua S. v. D.C. Everest School District, Decision and Order No. 170 (6/22/90); Roy H. v. Blair School District, Decision and Order No. 159 (9/26/88).

Finally, John's mother raises issues as to John's residency in the district and John's immunization records. As the district points out, these issues are not relevant to this review.

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 John [REDACTED] by
the Board of Education for the School District of West Allis-West
Milwaukee, et al. is affirmed.

Dated this 14 day of January, 1994.



John T. Benson, State
Superintendent of Public Instruction