

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
JOSHUA K [REDACTED]
by the Clinton Community School
District Board of Education

DECISION
AND
ORDER
93-EX-14

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 decision of the Clinton Community School District Board of Education expelling Joshua K [REDACTED] from that school district effective October 24, 1993, through the remainder of the 1993-1994 school year. This appeal was filed on behalf of Joshua by Attorney Perry L. Folts and was received by the Department of Public Instruction on December 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 of expulsion hearing dated October 19, 1993, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on October 24, 1993, which could result in Joshua's expulsion. The Notice also advised that the basis of the proposed expulsion was Joshua's alleged conduct at school which endangered the health, safety, or property of others, specifically his alleged possession of a loaded handgun while on school property during the week of October 4-8, 1993.

The hearing was accordingly conducted in closed session on October 24, 1993. Joshua and his parents and attorney appeared at the hearing.

At the hearing the school district administration presented evidence supporting the alleged misconduct by the pupil. Joshua admitted possession of a handgun on school property, apologized to the school and to his parents, and asked for another chance. He also offered several witnesses and written statements supporting his good character and referencing his good record.

After the hearing, the school board deliberated in closed session and entered its decision to expel Joshua. Notice of the Expulsion Decision dated October 25, 1993, was properly sent to Joshua and to his parents. In reaching its decision, the school

board found that Joshua had endangered the health, safety, or property of others at school.

The board also found that the interests of the school demanded expulsion. The expulsion decision expelled Joshua 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 his appeal, counsel for Joshua argues that the district failed to follow required procedure because it extended a three day suspension period into a ten day suspension period prior to sending a notice of expulsion hearing. Counsel accurately points out that sec. 120.13(1)(b), Wis. Stats., limits a district's authority to suspend a pupil to three days unless a notice of expulsion hearing has been sent. However, as the district points out, the State Superintendent lacks authority to review a suspension under sec. 120.13(1)(b), Wis. Stats. Jesse K. v School Board of Joint District No. 2, Decision and Order No. 131, June 17, 1985; Nancy Z. v. Janesville School District, Decision and Order No. 139, May 23, 1986.

In addition, counsel appears to object to the timeliness of the notice of expulsion hearing. Again, the district correctly cites the State Superintendent's prior decisions regarding the manner of computing the five day notice period required under sec. 120.13(1)(c), Wis. Stats. See e.g., Lori P. v. Cudahy School District, Decision and Order No. 169, May 21, 1990.

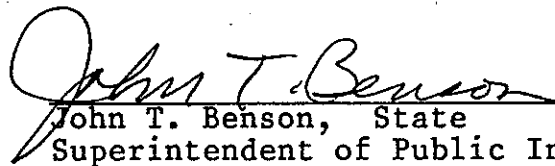
CONCLUSIONS OF LAW

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 Joshua K [REDACTED] by the Clinton Community School District Board of Education is affirmed.

Dated this 31st day of January, 1994.



John T. Benson, State
Superintendent of Public Instruction