

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
JARED L [REDACTED]
by the Menomonee Falls School
District Board of Education

DECISION
AND
ORDER
93-EX-18

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 Menomonee Falls School District Board of Education expelling Jared L [REDACTED] from that school district effective November 24, 1993, through November 24, 1994. This appeal was filed by Jared's mother, Dee Ann L [REDACTED], and was received by the Department of Public Instruction on December 16, 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 Pupil Expulsion Hearing dated November 17, 1993, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on November 24, 1993, which could result in Jared's expulsion. The Notice also indicated that the proposed expulsion was based on the pupil's alleged conduct at school which endangered the health, safety or property of others. Specifically, the notice alleged that the pupil on November 16, 1993, was in possession of a controlled substance with intent to deliver on school property and that others were aware of such possession in school.

The hearing was accordingly held on November 24, 1993. Jared appeared with his mother and father and without counsel.

At the hearing the school district administration presented evidence supporting the alleged misconduct by the pupil. Jared admitted that he had possessed marijuana at school on November 16, 1993, and that he had given it to another pupil at school. Both Jared's mother and father spoke in Jared's behalf. While they agreed that his conduct was wrong, they urged that he should be given another chance by the school.

After the hearing, the school board deliberated in closed session and decided to expel Jared. A Resolution and Order of Expulsion was subsequently entered on November 29, 1993, and was properly sent to Jared and to his parents. In reaching its decision to expel, the school board found that Jared had endangered the health and safety of others at school by possessing marijuana at school and giving it to another student

on November 16, 1993. The board also found that other students were aware that Jared had the marijuana at school. Finally the board found that the interests of the school demanded expulsion. The Notice of Expulsion expelled Jared for a period of one year. In her letter of appeal, Jared's mother urged that the penalty of expulsion was too severe and requested that I reinstate the pupil into school.

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, Jared's mother challenges the expulsion as unduly severe discipline. However, the State Superintendent has repeatedly ruled that the decision as to whether a pupil should be expelled and the length of the expulsion period 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); Michael G. v. Campbellsport School District Board of Education, Decision and Order No. 150 (5/26/87).

I cannot condone the pupil's conduct in this case in any way. However, as Jared's mother accurately urges in her appeal, access to education is absolutely critical to Jared as well as to all of our Wisconsin youth. I note that the district has apparently provided tutoring to Jared after expulsion and I applaud such efforts to maintain some continuity in his education. I also note that the expulsion resolution and order indicates that Jared may apply to the district's Superintendent

of Schools for early readmission. I therefore suggest that Jared and his parents pursue this possibility and that the school district share with them any information necessary to permit early readmission.

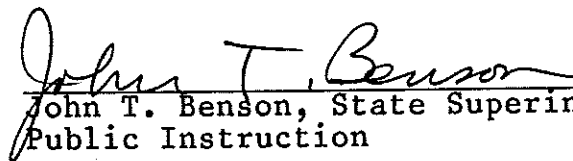
CONCLUSIONS OF LAW

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 Jared I [REDACTED] by the Menomonee Falls School District Board of Education is affirmed.

Dated this 10th day of February, 1994.



John T. Benson, State Superintendent of
Public Instruction