

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
Barry L. W [REDACTED]
by the Kenosha Unified School
District No. 1 Board of Education

DECISION
AND
ORDER
94-EX-01

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 June 14, 1993, order of the Kenosha Unified School District No. 1 Board of Education to expel Barry L. W [REDACTED], a 12 year old seventh grade student, from the Lincoln Junior High School until the end of the 1994-95 school year. This appeal dated December 19, 1993, was filed by Barry's mother, Mary W [REDACTED], and was received by the Department of Public Instruction on January 10, 1994.

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 affidavits of personal service upon Barry and his mother and an affidavit of mailing reflecting additional service by mail, again upon both Barry and his mother, all properly, timely, and separately served, of a notice of hearing regarding possible expulsion from school of Barry. Exhibit A to both sets of notices is a one page statement alleging Barry both repeatedly violated school rules and endangered the health and safety of others while at school. The Exhibit further alleged Barry had been recently tested for exceptional educational needs and had been determined to have no such need.

The hearing took place as scheduled, June 14, 1993. Barry and his mother appeared without counsel. A lengthy introductory statement, modeled largely on a departmental information sheet for use in cases of this nature where the student and parents appear without counsel, was read by board chairperson, James Metallo. There were no questions. Attorney Paul Wokwicz presented the administration's case. His first witness was dean of students at Lincoln Junior High School, Greg Brand. He outlined the 72 referrals by 19 different staff members made during the 1992-1993 school year. Most were for lesser violations like tardiness, failure to bring necessary materials to class, failure to attend detention, and refusing to follow directions and using foul language. However several were more serious. Six involved fighting, others included making threats to injure, one involved seizure of a beeper by the police, and the last was the confiscation of a BB gun from Barry's hallway locker.

Ms. W [REDACTED] suggested that Barry's hallway locker privileges had been taken away, that the district knew another child had used the BB gun, and that Barry may not have

been the only person who knew the old locker combination. In response to board member questions, Mr. Brand admitted he had no evidence that Barry knew the gun was in his locker. Mr. Brand emphasized Ms. W█████'s valuable and continued cooperation over the months. Principal Joseph Gassert also testified and reiterated this point, but also pointed out how the incidents had become progressively more aggravated from earlier in the school year to later. He also indicated he thought Barry may have given at least inconsistent information in two interviews with respect to his knowledge of whether the BB gun was in his locker. In this regard, Mr. Wokwicz asked whether the administration would still recommend expulsion even if there had been no BB gun incident and Mr. Gassert stated it would and did. Mr. Gassert did not make a recommendation for any specific period of expulsion. Barry's mother also asked him a few questions.

After the administration rested, the W█████'s called Rose Harmon, Barry's Sunday school teacher, who testified as to her good teaching and other experiences with him. She taught him weekly for over two years and saw him daily, as they lived down the street from each other. She stated he was an excellent student, that he did not own a BB gun, and that the district should keep him in school, give him another chance, and not expel him. Some board members actively questioned her. She replied she had never seen Barry fight or lose his temper.

Neither Barry nor his mother chose to formally testify, but Mrs. W█████ did add substantive evidentiary information several times in the proceedings. Mr. Wokwicz gave a brief closing statement stating there was a basis in the evidence for findings of repeated refusal and neglect of school rules as well as conduct at school that endangered pupils.

In closing, Barry's mother referred to one of the instances of misconduct in which she went to the school and, after investigating, determined the student Barry was then accused of having inflicted facial marks upon did not have such marks. The board then gave and Ms. Harmon took the opportunity to make a closing statement as well. She emphasized that expelling a twelve year old would deprive him of an education, and that essentially the board had gotten Barry's attention and she believed he would respond favorably. She offered to visit the school and to work with Barry and his mother.

The record shows all but the clerk and board members were excluded from the hearing room where the board unanimously voted to approve motions to expel Barry for two years, until the end of the 1994-1995 school year on the two grounds previously mentioned and upon the finding that the interests of the district demanded the expulsion.

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.

There has been no briefing in this case. Ms. W[REDACTED]'s appeal letter refers to the need for a "kind of secondary plan" for expelled children. She indicates she cannot afford private education nor a move to another school district, the only two options presented by the district when she contacted their personnel after receiving the expulsion decision. Over the years this Department has encouraged districts to offer at least home bound study for regular education students who have been expelled, Dale C. v. Central/Westosha School District, Decision and Order No. 137, p. 5 (May 15, 1986), and Susan Marie H. v. Kenosha Unified School District, Decision and Order No. 157, pp. 9-10 (June 28, 1988). The Department has also approved districts' impositions of conditions upon reentry to school prior to the expiration of a period of expulsion, Jesse F. v. Stanley-Boyd School District, Decision and Order No. 189 (April 21, 1992), Demetris S. v. Milwaukee School District, Decision and Order No. 194 (June 8, 1992), Jason S. v. Kenosha Unified School District No. 1, Decision and Order No. 205 (April 19, 1993), and Brandon H. D. v. De Soto Area School District, Decision and Order No. 206, p. 7 (May 3, 1993). A two year expulsion of a twelve year old is a long time. The State

Superintendent has not exercised authority over the length of expulsions, Jesse F., supra., p. 5. Under the circumstances of this case I urge the board to consider an offer of education services to Barry prior to the expiration of the two year period of expulsion.

In reviewing the record in this case I find that the Kenosha Unified School District No. 1 complied with all of the applicable procedural requisites and I am therefore compelled to affirm the expulsion.


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., with regard to Barry's expulsion.

ORDER

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

Dated this 7th day of March, 1994.



John T. Benson
Superintendent of Public Instruction