

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

LORI L [REDACTED]

by the Baraboo School District Board of
Education

DECISION
AND
ORDER

94-EX-08

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 February 28, 1994, order of the Baraboo School District Board of Education to expel Lori [REDACTED] from the Baraboo School District for the balance of the third quarter of the 1993-94 school year, or through March 25, 1994. This appeal, dated March 3, 1994, was filed by Lori's attorney, Warren A. Kenney, and was received by the Department of Public Instruction on March 7, 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), 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 Hearing from the Baraboo School District dated February 10, 1994. The Notice advised a hearing would be held on February 21, 1994, which could result in Lori's expulsion from school. The Notice was sent separately to Lori and her mother. The minute sheet of the hearing indicated certified mail receipts were received. The Notice contained an allegation that, while at school, Lori struck a teacher, threatened to hit the teacher with a plunger, used profane language, and caused property damage. The Notice indicated the conduct violated school rules and endangered the property, health, or safety of other while at school.

At the request of Lori's attorney the hearing was conducted in closed session on February 21, 1994. Audio tapes of the hearing were made and are part of the record. Lori and her mother appeared in person and Lori was represented by Attorney Warren A. Kenney. Lori's stepfather was also present. At the hearing the school district administration presented testimony supporting the alleged misconduct by the pupil. Lori, her mother, and her attorney were given an opportunity to question the witnesses, present testimony, and respond to the allegations.

After the hearing the school board deliberated in closed session. The school board decided to expel Lori for the remainder of the third quarter of the 1993-94 school year, or through March 25, 1994. Lori's readmission to the school for the fourth quarter of the 1993-94 school year was contingent upon her review of the student handbook. An Order of Expulsion was entered on February 28, 1994, effective February 21, 1994. A copy of the Order was sent to Lori and her mother. The school board found Lori engaged in

conduct that endangered the property, health, and safety of students and staff while at school. The school board further found the interests of the school district demanded the pupil's 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.

No brief has been submitted by any party to this matter. The appeal notice did not raise any specific procedural error. However, the case does present an issue that requires comment. The board of education expelled Lori through March 25, 1994. The board conditioned Lori's re-admission to the junior high school on her review of the student handbook on or before March 28, 1994. My predecessor has questioned whether a school board has any statutory authority to condition a student's re-admission to school on participation in a certain activity, i.e., counseling or treatment. Lori P. v. School District of Cudahy Board of Education, Decision and Order No. 169 (May 21, 1990). A school board may structure a student's participation in certain conditions as an alternative to expulsion or as a condition for early re-admission. However, once the period of expulsion expires, re-admission must be unconditional and any such condition is unenforceable. Miranda V. v. Howard-Suamico School District Board of Education, Decision and Order No. 224 (March 22, 1994). In reviewing the record in this case I find that the Baraboo School District otherwise complied with all of the applicable procedural requisites. I therefore affirm the expulsion decision as entered and direct that the condition on re-admission be stricken.

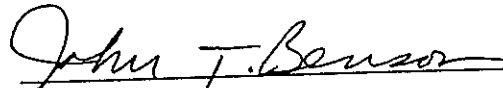
CONCLUSIONS OF LAW

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 Lori L [REDACTED] by the Baraboo School District Board of Education is affirmed.

Dated this 22nd day of April, 1994.



John T. Benson
State Superintendent of Public Instruction