

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
JACK P. [REDACTED]
by the Crandon School
District Board of Education

DECISION
AND
ORDER
94-EX-11

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 Crandon School District Board of Education expelling Jack P. [REDACTED] from that school district effective February 24, 1994, through the remainder of the 1993-1994 school year. This appeal was filed by Attorney Jon Cassady, and was received by the Department of Public Instruction on March 30, 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 a Notice of Expulsion Hearing dated January 31, 1994, which was properly sent to the pupil and to his parents. The Notice advised that a hearing would be held on February 24, 1994, which could result in Jack's expulsion. The Notice alleged that Jack had engaged in conduct which endangered the health, safety, or property of others, and that it was in the best interest of the school that the pupil be expelled. In addition, the Notice referred to the "back side of this notice as well as attachments for more information."

The back side of the Notice contained a copy of sec. 120.13(1)(c), Wis. Stats. However, the Notice did not contain the the full current text of that statutory subsection in that it failed to reflect the language added to that subsection by 1987 Act 88, section 3, effective November 28, 1987.

The attachment to the Notice consisted of a summary list of six incidents of alleged misconduct by the student, giving the dates and specific nature of each incident and the disciplinary action taken by the school in response to each incident. The alleged misconduct dated from October 1, 1991, through January 21, 1994. The final entry on January 21, 1994, referenced possession and concealment of a dangerous weapon on January 14, 1994.

The hearing was accordingly conducted on February 24, 1994. The pupil appeared with his father and his attorney.

At the hearing the high school principal presented testimony regarding the alleged misconduct by the pupil. The record indicates that in the presence of the high school principal and a law enforcement officer, the pupil admitted bringing an unloaded pellet pistol to school on January 14, 1994, and leaving it in his jacket pocket in a friend's locker until he could carry it home with him on the bus. The pupil also indicated that the gun would not fire because it did not contain necessary CO-2 cartridges.

The principal also testified regarding the prior alleged incidents of misconduct by the pupil. That testimony consisted of a recitation of each incident contained on the attachment to the Notice of Expulsion Hearing, as well as the discipline imposed as to each incident.

The pupil, his attorney, and his parent were then given an opportunity to question the witnesses and to respond to the school district administration's evidence. In his testimony, the pupil did not deny that he had possessed the gun at school, nor did he, his parent, or his attorney challenge the accuracy of the record as to the earlier incidents of misconduct submitted by the administration. Two other witnesses spoke in the pupil's behalf. Neither of these witnesses addressed the accuracy of the pupil misconduct as alleged by the administration.

After the hearing, the school board deliberated in closed session and decided to expel the pupil for the remainder of the 1993-1994 school year. The Findings and Order of Expulsion was

subsequently entered on March 8, 1994, and was properly sent to the pupil and to his parents.

In reaching its decision, the school board found that the pupil possessed a pellet gun at school on January 14, 1994, and that prior to that he had engaged in the five other incidents of misconduct referred to in the attachment to the Notice of Expulsion. The board also found that the pupil was guilty of repeated refusal or neglect to obey school rules and that the pupil engaged in conduct which endangered the health and safety of others at school. Finally, the board found that the interests of the school district demanded 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.

In support of this appeal, the pupil's attorney raises two points. First, he argues that no evidence was presented at the hearing concerning the five alleged incidents of misconduct prior to the incident involving the pellet gun. Second, he argues that no evidence was presented that any person or property was actually endangered as a result of the gun incident in that the gun was not operational and had not been taken out of the locker by the pupil until the end of the day to return home.

With regard to the first point, the high school principal testified as to the pupil's prior disciplinary history at the school. The pupil did not contest or challenge the accuracy of that disciplinary summary in any way, although each of those prior incidents had been specified in the attachment to the Notice of Expulsion Hearing. Given the high school principal's recitation of the prior disciplinary record and the pupil's failure to question or challenge that summary, the board may reasonably have concluded that the prior incidents occurred as alleged. The State Superintendent will not reverse board

findings if there is any reasonable view of the evidence which will sustain those findings. See e.g., Rhiannon V. v. Muskego-Norway School District, Decision and Order No. 188 (April 21, 1992); Roy H. v. Blair School District, Decision and Order No. 159 (September 26, 1988); Kathleen W. v. Tri-County Area School Board, Decision and Order No. 127 (May 10, 1985).

Likewise, with regard to the gun incident, the record permitted the board to find that possession and concealment of the gun at school endangered the health, property, or safety of others. The State Superintendent has so ruled repeatedly in previous cases. For example, in Christopher F. v. Milwaukee Public Schools Board of School Directors, Decision and Order No. 143 (July 2, 1986), the State Superintendent ruled that whether a gun at school was "broken" or not is irrelevant under sec. 120.13(1)(c), Wis. Stats., stating further that "the reaction to the presence of a gun on school grounds can create a dangerous situation at school. The property, health, and safety of others may be endangered by the presence of a gun." Id., p. 9. (Emphasis added.) The State Superintendent concluded, therefore, that a reasonable view of the evidence permitted the board to find that possession of the gun at school endangered the health, property, or safety of others.

Similarly, in Demetris S. v. Milwaukee School District Board of Education, Decision and Order No. 194 (June 8, 1992), the State Superintendent upheld the board's finding that the pupil's possession of an unloaded BB gun at school endangered the health, safety, or property of others.

However, the district failed to comply with a different statutory mandate in this case. As indicated above, the district failed to include a full and current copy of sec. 120.13(1)(c), Wis. Stats., on the face or back of its expulsion notice. The State Superintendent has previously ruled that such failure is reversible error. See Bradley Scott P. v. Menasha Joint School District, Decision and Order No. 197 (August 21, 1992); Shane M. B. v. Green Bay Area Public School District, Decision and Order No. 190 (April 21, 1992); Russell B. v. Muskego-Norway School District, Decision and Order No. 175 (February 28, 1991); Chad K. v. Whittenberg-Birnamwood School District, Decision and Order No. 168 (May 7, 1990).

Because the district failed to comply with this statutory mandate, I am compelled to reverse the expulsion decision in this matter. This decision should not be read as condoning the alleged conduct of the pupil in any way. In addition, I applaud the board's interest and willingness to work with this pupil to provide alternative education during the period in which he was excluded from school.

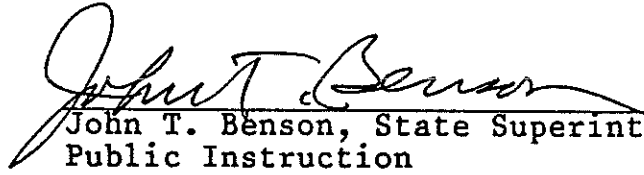
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jack P [REDACTED]
by the Crandon School District Board of Education is reversed.

Dated this 3 day of ^{MAY} April, 1994.



John T. Benson, State Superintendent of
Public Instruction