

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

 In the Matter of the Expulsion of

PAUL O [REDACTED]

DECISION
AND
ORDERby the Florence County School District
Board of Education

94-EX-12

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 March 29, 1994, order of the Florence County School District Board of Education to expel Paul O [REDACTED] for five weeks of the 1993-94 school year. This appeal, dated April 26, 1994, was filed by Paul's parent and was received by the Department of Public Instruction on May 2, 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 letter dated March 24, 1994, from the Florence County School District Administration. The letter advised a hearing would be held on March 29,

1994, which could result in Paul's expulsion from school for the remainder of the 1993-94 school year. The letter was sent separately to the pupil and his parents. The letter indicated the reason for the expulsion hearing was that Paul was in possession of a knife and cut another student on the eyelid with the knife.

The hearing was conducted in closed session on March 29, 1994. Paul and his parents appeared at the hearing without counsel. An audio tape recording of the expulsion hearing was made and is part of the record.

At the hearing the school administration representative gave testimony concerning Paul's conduct in cutting another student's eyelid with a knife. Paul and his parents were given an opportunity to speak and to respond to the allegations. According to the hearing minutes, a letter from the District Administration was read into the record. This letter recommended expulsion because of the seriousness of ~~the~~ conduct. This letter also gave a recommendation as to the length and the conditions of the expulsion.

After the hearing, the school board deliberated in closed session. On March 29, 1994, the school board decided to expel Paul for five weeks, but gave him credit for one week already spent on suspension. The board also ordered homebound instruction during the remaining four weeks of expulsion. Paul would be re-admitted to school on or about April 27, 1994. The order further provided that, with the approval of Paul's parents, Paul was to complete 140 hours of community service by the end of 1994-95 school year. The school board ordered the expulsion expunged from Paul's record upon graduation if there were no further incidents. The board concluded that Paul's conduct endangered the health and safety of another and the interests of the school demanded his expulsion. A copy of the expulsion order, containing the findings and conclusions of the school board, was sent separately to Paul and his parents.

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.

The appeal letter in this case questions the propriety of the requirement that Paul perform 140 hours of community service by the end of the 1994-95 school year.¹

¹Sec. 118.33(1)(c), Stats., authorizes school boards to require community service activities as a condition of receiving a high school diploma. A similar provision has been upheld against the argument that this practice violates the involuntary servitude provision of the Thirteenth Amendment. Steirer v. Bethlehem Area School District, Third Circuit, 61 LW 2576, March 15, 1993. The U.S. Supreme Court recently denied review. Sec. 118.33 Stats. is not at issue in this case.

Previous decisions have questioned whether a school board has any authority to impose a condition on a child's re-admission after the period of expulsion has expired. Teresa Lynn v. Janesville School District Board of Education, Decision and Order No. 120, (June 1, 1984), Trevis P. v. Arrowhead School District Board of Education, Decision and Order No. 121, (September 13, 1984), Michael J. B. v. Palmyra-Eagle Area School District Board of Education, Decision and Order, No. 151, (July 27, 1987). In May 1989, the department wrote in Education Forward in an article entitled "Expulsion Cases Require Close Attention and Accurate Records", p. 14:

"While school boards may not have authority to require counseling or assessment, we believe they may structure the participation in appropriate assessment or counseling as an alternative to expulsion or as a condition for early readmission to school should the student choose that option."

This position was also discussed in Lori P. v. School District of Cudahy Board of Education, Decision and Order, No. 169, (May 21, 1990). In 1991, the department issued recommended forms, including an Order of Expulsion explaining that conditions for early readmission are acceptable but that once the term of expulsion has expired, full unconditional state constitutional rights to an education are reinstated. Recent decisions have repeated this view. Miranda V. v. Howard Suamico School District Board of Education, Decision and Order No. 224, (March 22, 1994). Lori L. v. Baraboo School District Board of Education, Decision and Order No. 227, (April 22, 1994).

The school board argues that the imposition of the community service requirement was an alternative to a lengthier expulsion that was agreed to by the parents and school board. Neither the hearing minutes nor the expulsion order support this position. Neither document indicates the community service requirement was an alternative to a lengthier period of expulsion.

In reviewing the record in this case I find that the Florence County School District Board of Education otherwise complied with all the applicable procedural requisites. I therefore affirm the expulsion decision as entered but on the precedents referred to direct that the condition of community service hours, as a condition sought to be enforced after the term of expulsion has expired, be stricken. This decision in no way condones the pupil's conduct in this case. The school board of education is commended for its efforts to deal with a serious case in a creative and well intentioned manner.

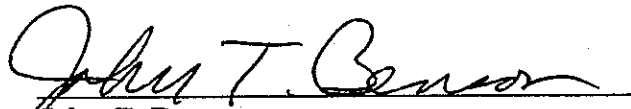
CONCLUSIONS OF LAW

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, as modified.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Paul ^{0.} [REDACTED] by the Florence County School District Board of Education is affirmed.

Dated this 28 day of June, 1994.


John T. Benson
State Superintendent of Public Instruction