

expulsion. As the basis for the proposed expulsion, the letter alleged that the pupil had possessed a "look alike" handgun on school grounds and had threatened several students with it after the dance on May 13, 1994.

The board accordingly met on May 23, 1994 and convened in closed session to consider the proposed expulsion. The pupil appeared with his mother and without counsel. It is unclear from this record what if any testimony was actually offered during that closed session. However, the record contains a summary of the May 13, 1994 incident presumably presented by the school district administration at that hearing. Further, the record indicates that the pupil admitted at the hearing that he had shown a "cap gun" to a friend and the friend's girlfriend got scared. The pupil also stated that "most people knew it was not a real gun."

By letter dated May 24, 1994, the pupil and the pupil's mother were notified that the Board had expelled him for endangering the health and safety of others by threatening and intimidating several middle school students with a "look alike" firearm. The record does not include a finding by the Board that the interest of the school demands expulsion of the pupil.

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.

Because the district in this case failed to comply with two statutory requirements, I am compelled to reverse this expulsion decision. First, the district failed to provide a complete current copy of s. 120.13(1)(c) Wis. stats. with the notice of expulsion. Specifically, the version of that statute used by the district failed to include the statutory amendment accomplished by 1993 Wisconsin Act 284 which became effective April 28, 1994. The State Superintendent will reverse an expulsion for failure to provide a complete, current copy of s. 120.13(1)(c) to the pupil and parent. See e.g. Jack P. by the Crandon School District, Decision and Order No. 229, May 3, 1994; Chad K. by the Whittenberg-Birnamwood School District, Decision and Order No. 168, May 7, 1990. (In an attempt to avoid this type of error, on April 25, 1994 I sent a memo to all school districts in the state advising of the requirement to use the complete current version of the statute and providing a copy of the current statute as amended by 1993 Act 284.)

Second, the record fails to reflect the requisite finding by the Board that the interests of the school demands expulsion. This omission requires reversal. See e.g. Nicole P. v. Crandon School District, Decision and Order No. 184, February 7, 1992; Bradlev Scott P. by the Menasha Joint School District, Decision and Order No. 197, August 21, 1992.

Because the district failed to comply with the foregoing statutory requisites, 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 this matter. In addition, I want to take this opportunity to commend the district for offering summer school and other alternative educational opportunities for the pupil after expulsion in an effort to permit him to attempt to progress to the ninth grade with other classmates.

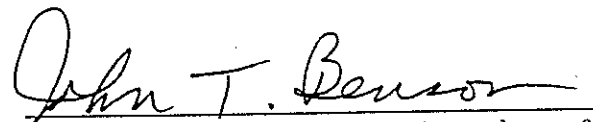
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the district 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 Mark P [REDACTED] by the Slinger School District Board of Education is reversed.

Dated this 1 day of August, 1994.



John T. Benson, State Superintendent of
Public Instruction