

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

DECISION
AND
ORDER

MARK ^P [REDACTED]

by the Marinette School District
Board of Education

94-EX-17

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 decision of the Marinette School District Board of Education to expel Mark ^P [REDACTED] from school for the remainder of the 1993-94 school year. This appeal was filed by the father's attorney, Clay F. Teasdale, and was received by the Department of Public Instruction on June 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 letter dated April 26, 1994, from the Marinette School District attorney to the pupil and his parents. The letter advised that a hearing would be held on May 2, 1994, concerning Mark's expulsion from school for the remainder of the 1993-94 school year. The letter alleged that Mark had possessed a firearm on school grounds and made threats toward a teacher. The record also contains a transcript of the May 2, 1994, expulsion hearing.

The hearing was held in closed session on May 2, 1994. Mark, his mother, stepfather, and father were present at the hearing. Neither the child nor the parents were represented by counsel. At the hearing the school district administration presented evidence on the grounds for expulsion. Mark and his parents were given an opportunity to cross examine the school district's witness and to present evidence in response to the allegations.

After the hearing, the board deliberated in closed session. The transcript does not include any part of the board's deliberation or its findings. The record also contains a letter dated May 5, 1994, from the school district attorney to Mark and his parents. The letter advised that because Mark brought a firearm to school he must be expelled for the remainder of the 1993-94 school year. The record did not contain a finding by the board that the interests of the school demand 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.

Because the district in this case failed to comply with a statutory requirement I am compelled to reverse this expulsion decision. The record fails to

reflect the requisite finding by the board that the interests of the school demand the pupil's expulsion. This omission requires reversal. Mark P. v. Slinger Board of Education, Decision and Order No. 234, August 1, 1994; Michael S. v. Milwaukee Public Schools Board of School Directors, Decision and Order No. 128, May 10, 1985.

It may be possible for the board, without completely rehearing the case, to correct its omission. See decisions in Nicole P. v. Crandon School District Board of Education, Decision and Order No. 184, February 7, 1992, and Nicole P. v. Crandon School District Board of Education, Decision and Order No. 193, May 29, 1992.

The parent's appeal brief in this case raises other issues dealing with the sufficiency of the notice of the hearing and a denial of due process. Because this case is reversed on other grounds it is unnecessary to consider these issues.

Because the district failed to comply with the statutory requirements I am compelled to reverse the expulsion decision. I do so very reluctantly. The conduct in this case is very serious. This decision should not be read as condoning the conduct in this case. I also want to commend the district for offering homebound instruction to the pupil to permit him the opportunity for continued academic progress.

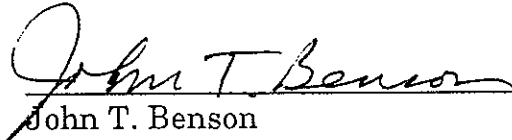
CONCLUSIONS OF LAW

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 Marinette School District Board of Education is reversed.

Dated this 26th day of August, 1994.



John T. Benson
State Superintendent of Public Instruction

