

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

TRACY M. [REDACTED]

by the Random Lake School District
Board of Education

DECISION
AND ORDER
94/95-EX-5

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 action of the School District of Random Lake Board of Education expelling Tracy M. [REDACTED] from that school district effective November 7, 1994. This appeal was filed by Tracy's attorney, Howard B. Mitz and was received by the Department of Public Instruction on November 17, 1994.

In accordance with the provisions of sec. PI 1.04(5), Wis. Admin. Code, this Decision and Order is confined to a review of the record of the school board proceeding. 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 October 25, 1994, from the Superintendent of the Random Lake School District addressed to the pupil. A copy of the letter was also sent to the pupil's parents. Both letters were sent by certified mail. The October 25, 1994 letter advised that

a hearing would be held on November 2, 1994, which could result in the pupil's expulsion. As the basis for the proposed expulsion, the letter alleged that the pupil had engaged in loud and inappropriate language while slamming doors and hitting lockers on September 22, 1994; was involved in a physical altercation with another student on October 14, 1994; and was involved in a physical altercation with another student on October 18, 1994 resulting in a broken classroom window. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains written findings and an order of expulsion dated November 7, 1994. The record also contains the minutes of the school board expulsion hearing. A copy of the Random Lake Student Handbook is also part of the record. Three letters addressed to Tracy's parents from the high school principal, Tom Malmstadt dated September 23, 1994, October 17, 1994 and October 19, 1994 are also part of the record.

The board accordingly met on November 2, 1994. Tracy appeared with her attorney and the hearing was held in closed session. At the hearing the school district presented evidence concerning the grounds for expulsion. The minutes indicate that witnesses were called by the school district. The pupil's attorney cross examined witnesses and was given the opportunity to present evidence.

After the hearing the school board deliberated in closed session. The school board found Tracy guilty of repeated refusal to obey school rules and also that Tracy engaged in conduct while at school which endangered the safety of others. The board further found that the interests of the school demand that Tracy be expelled. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated November 7, 1994 was mailed separately to Tracy and her parents by certified mail. The order stated that Tracy was expelled until June 9, 1995.

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 pupil's appeal in this case raises two interrelated issues. First, Tracy argues that the school board's decision to expel her is not supported by the evidence. Arguments as to the sufficiency of the evidence have been held to be beyond the scope of the superintendent's review. *Brad M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994); *Taiwan O. W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). The credibility of witnesses is judged by the school board. It is the province of the board to evaluate the evidence and determine whom they believe. *William S. v. Tri-County Area School Board of Education*, Decision and Order No. 132 (June 21,

1985), citing *State ex rel De Luca v. Common Council*, 72 Wis. 2d 672. 695, 224 N.W. 2d 689 (1976).

In a related argument, Tracy argues that the record is deficient since it consists solely of "minutes" of the hearing which do not detail the evidence that was presented and upon which the board relied to base its decision.

While the minutes indicate that the hearing was recorded, no written transcript has been prepared. Section 120.13 (1)(c), Wis. Stats., states in part:

"...The school board shall keep written minutes of the hearing...."

The school board has complied with this requirement. While a written transcript is highly preferred and is a better reflection of the hearing process, the statute does not require that one be provided for review on appeal. Because the review of an expulsion order is based only on the record, it is imperative that all findings necessary to satisfy the requirements of sec. 120.13(1)(c) be reflected in the record in some manner. *Joshua S. v. D.C. Everest School District*, Decision and Order No. 170 (June 22, 1990). I find that the record in this case contains all the necessary findings to satisfy the requirements of the statute.

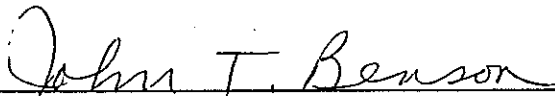
CONCLUSIONS OF LAW

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 Tracy M [REDACTED] by the Random Lake School District Board of Education is affirmed.

Dated this 11th day of January, 1995.



John T. Benson, State Superintendent of
Public Instruction