THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of BRAD O[redacted] by the Madison Metropolitan School District Board of Education	DECISION AND ORDER 94/95-EX-7

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 Madison Metropolitan School District Board of Education to expel Brad O[redacted] from that school district, effective December 21, 1994 through the 1995-96 school year. This appeal, dated January 18, 1995, was filed on behalf of the pupil by his attorney, Richard F. Rice, and was received by the Department of Public Instruction on January 19, 1995.

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 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 December 7, 1994 from the Assistant Superintendent of the Madison Metropolitan School District addressed to the pupil's parent. A copy of the letter was also sent to the pupil. The December 7 letter advised that a hearing would be held on December 19, 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 conduct while at school which endangered the property, health or safety of others by bringing a weapon, i.e., a nightstick, on the LaFollette High School premises on December 1, 1994.

The board accordingly met on December 19, 1994 and convened in closed session to consider the proposed expulsion. The pupil appeared with his parents and with his attorney, Richard F. Rice. No witnesses were called since the pupil did not contest the expulsion hearing. The record indicates that the pupil stipulated to the facts and agreed that expulsion was appropriate given the conduct of bringing a nightstick to school. No testimony was offered. However, the district made an offer of proof that on December 1, 1994 the pupil brought a nightstick to school, an act which was in violation of state law and school rules. The record contains a finding that the pupil's conduct endangered the health or safety or others and that the interest of the school demands the pupil's expulsion until the end of the 1994-95 school year. The pupil stipulated to these findings. The record also indicates that the pupil had previously been expelled for the 1993-94 school year for bringing a 9 mm handgun onto school premises.

By letter dated January 12, 1995 the pupil and the pupil's parents were notified that the Board had expelled him for endangering the health and safety of others by bringing a nightstick to school on December 1, 1994 until the end of the 1994-95 school year. On January 17, 1995 the pupil and the pupil's parents were informed that the board had modified its original findings that the interest of the school demands the expulsion of the pupil until the end of the 1995-96 school year.

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 his brief the pupil contends that the school board's modified order extending the length of the expulsion through the 1995-96 school year is unjust and arbitrary for three reasons.

First, the pupil argues that the Board failed to follow the administration's recommendation concerning the length of the expulsion. The administration recommended that the pupil be expelled for the remainder of the 1994-95 school year after considering the nature of the conduct as well as the prior episode that previously resulted in the pupil's expulsion. The pupil alleges that the recommendation should have been followed since the administration had first-hand knowledge of the prior offense when it recommended expulsion through the 1994-95 school year.

However, as the District points out, the State Superintendent has previously upheld a school board's decision to expel a student for a period longer than that recommended by the school administration, stating that "the proper duration of expulsion is a matter left to the discretion of the board." *Eric P. by the Tomah Area School District Board of Education*, Decision and Order No.210, August 12, 1993.

Second, the pupil argues that the length of the expulsion is excessive and a gross injustice where the pupil will have no incentive to complete his education, having fallen two years behind. The State Superintendent has repeatedly held that the length of the expulsion is generally within the discretion of the school board as long as the board complies with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats. See *Brandon H. v. DeSoto Area School District*, Decision and Order No. 206 (May 3, 1993); *Lavel A. v. Kenosha Unified School District*, Decision and Order No. 147 (January 12, 1987); and *Susan Marie H. v. Kenosha Unified School District*, Decision and Order No. 157 (June 18, 1988).

Third, the pupil challenges the length of the expulsion as arbitrary and excessive when compared with other periods imposed on other students. However, as the District correctly points out, appeals based on disparate treatment have been unpersuasive and this case presents no circumstances to justify a departure from past practice. See *Douglas S. by the Neenah School District*, Decision and Order No. 162, May 23, 1989, and *Eric P., supra.*

Based on my review of the record I conclude that the school board complied with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats., and further that the length of the expulsion is within the discretion of the Board. Accordingly, I must affirm the order of expulsion.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Brad C[redacted]y the Madison Metropolitan School District Board of Education is affirmed.

Dated this 16th day of March, 1995.

John T. Benson
State Superintendent of Public Instruction