

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

REBECCA S [REDACTED]

by the Janesville School District
Board of Education

DECISION AND ORDER
94/95-EX-9

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 February 23, 1995 order of the Janesville School District Board of Education to permanently expel Rebecca S [REDACTED] from the Janesville School District. This appeal, dated March 9, 1995, was filed on behalf of the pupil by her attorney, Thomas Hornig, and was received by the Department of Public Instruction on March 13, 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 January 24, 1995 from the Superintendent Schools of the Janesville School District. The letter advised that a hearing would be held on February 6, 1995 concerning the expulsion of Rebecca S [REDACTED] from the Janesville School District. The letter was sent separately to Rebecca and her parents by certified mail. The letter alleged that Rebecca engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and that was in violation of school policy. The letter specifically alleged Rebecca was in possession of a dangerous weapon and had knowledge of an assault on another student which she failed to report. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. A copy of two school board policies on weapons was also attached to the letter. The letter also advised that Rebecca's complete attendance, disciplinary and academic records may be considered. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held on February 6, 1995 in closed session. Rebecca and her parents appeared at the hearing. Also present was Attorney Hornig, Rebecca's attorney. At the hearing Rebecca, through her attorney, admitted to being asked by another student to allow a knife to be kept in Rebecca's locker. Rebecca acknowledged that she did keep the knife in her locker, inside her backpack, from approximately 10:40 a.m. to 12:50 p.m. on January 18, 1995. After that, rather than turning the knife in, she gave it to another student.

The administration presented written materials concerning the grounds for the expulsion, consisting of witness statements, incident reports, a report on the mechanical functioning of Rebecca's locker, two school board policies on weapons and Rebecca's complete disciplinary, academic and attendance records. Rebecca was given the opportunity to present evidence and offered the testimony of a number of witnesses on her behalf.

After the hearing, the school board deliberated in closed session. The board found Rebecca did engage in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others and violated school policy. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated February 23, 1995, was mailed separately to Rebecca and her parents. The order stated Rebecca was permanently expelled.

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.

There are two issues raised in this appeal. First, Rebecca argues that after hearing all the evidence the administration recommended expulsion for the remainder of the 1994-95 school year, but the board then elected to disregard the recommendation and permanently expel Rebecca. I have 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); *Lavell 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).

Additionally, I have previously upheld a school board's decision to expel a student for 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. v. Tomah Area School District Board of Education*, Decision and Order No. 210 (August 12, 1993); and *Brad O. v. Madison Metropolitan School District Board of Education*, Decision and Order No. 246 (March 16, 1995). There is no provision in sec. 120.13(1)(c), Wis. Stats., which limits the duration of an

expulsion. Accordingly, an expulsion for the remainder of a student's career appears to be statutorily permissible. See *Jesse K. v. School Board of Joint District No. 2 of Sun Prairie (and others)*, Decision and Order No. 131, June 17, 1985. See also *Michael G. v. Hudson School District Board of Education*, Decision and Order No. 219, February 11, 1994, upholding permanent expulsion of pupil.

Second, Rebecca alleges that it was reversible error for the school board to conduct the expulsion hearing in closed session. On the date of the hearing, counsel for Rebecca was asked if the pupil wanted the hearing to be open or closed. The record shows that Attorney Hornig responded that the hearing could be closed but that Rebecca's witnesses would like to remain. It was explained that witnesses would not be allowed to attend a closed hearing. Attorney Hornig then responded that it would be okay to hold the meeting in open session. After citing sec. 19.85(1)(f), Wis. Stats., and sec. 120.13(1)(c), the board moved to close the hearing, making reference to the disciplinary records which contained the names of other students. Rebecca argues that it was procedural error for the board to close the hearing on its own motion since only she or her parents could make the decision to close the hearing under the statute.

Sec. 19.85(1)(f), Wis. Stats., provides in part that a meeting may be conducted in closed session if the board is considering "personal histories or disciplinary data of specific persons...which if discussed in public would be likely to have substantial adverse effect on the reputation of any person referred to in such histories or data...."

Section 120.13(1)(c), Wis. Stats., provides in part that "upon request of the pupil...and the pupil's parents..., the hearing shall be closed." Counsel for Rebecca argues that this language requires that a hearing be held in *open* session if the pupil and parent so demand. However, the language on its face gives the pupil and the parent the right only to insist on a closed session. If

the board proceeded in open session contrary to the request of the pupil and parent, the procedural requirements of sec. 120.13(1)(c), Wis. Stats., might compel reversal. In this case, however, the matter was conducted in closed session and the right to demand and receive a closed session, therefore, was not violated. The State Superintendent is authorized to address the open or closed nature of the proceeding only if the pupil or the pupil's parent demands a closed meeting and that demand is denied. See *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213 (December 20, 1993) and *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 214 (December 28, 1993).

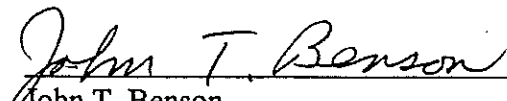
CONCLUSIONS OF LAW

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 Rebecca S [REDACTED] by the Janesville School District Board of Education is affirmed.

Dated this 8th day of May, 1995.



John T. Benson
State Superintendent of Public Instruction