

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

DWAYNE O [REDACTED]

by the Milwaukee Public School District
Board of Directors

DECISION AND ORDER
94/95-EX-10

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 order of the Milwaukee Public School District Board of Directors expelling Dwayne O [REDACTED] from that school district from January 31, 1995 until June 9, 1995. This appeal was filed by Dwayne's attorney, Grayson B. Frattura-Kampschroer, and was received by the Department of Public Instruction on March 27, 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 hearing before the Independent Hearing Panel and school board proceedings adopting the Panel's decision. 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 Notice of Student Expulsion Hearing dated January 19, 1995 which was properly sent to the pupil and to his mother. The Notice advised that a hearing would be held on January 31, 1995 which could result in Dwayne's expulsion. The Notice also specified that expulsion was being considered based on possession with intent to distribute marijuana at school on January 6, 1995. Sections 120.13 and 119.25(1)(c), Wis. Stats., were attached to the notice. The hearing was accordingly conducted before an Independent Hearing Panel (hereinafter Panel) in closed session on January 31, 1995. Dwayne and his mother appeared without counsel.

At the hearing the school district administration presented testimony supporting the alleged misconduct by the pupil. Dwayne and his mother were given the opportunity to question and to respond to the administration's evidence. Dwayne admitted that he possessed marijuana at school and that he intended to deliver it to another boy in exchange for money.

After the hearing, the Panel deliberated in closed session and returned with its decision to expel Dwayne. An Expulsion Order dated January 31, 1995 was properly sent to Dwayne and his mother. That order found that Dwayne had endangered the health and safety of others at school by possessing marijuana with intent to deliver at school and that the interests of the school demanded expulsion. The Panel expelled Dwayne until June 9, 1995. On February 22, 1995 the school district's Board of Directors adopted the Panel's expulsion decision.

At the time of the expulsion decision, Dwayne was not identified as a child with exceptional educational needs (EEN). In his appeal, Dwayne's counsel argues that the district should have screened, referred and identified Dwayne as a child with EEN.

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.

At the time of the expulsion proceeding, the pupil was not identified as a child with exceptional educational needs (EEN). Counsel for the pupil argues that the district should have screened, referred and identified Dwayne as a child with EEN. Pursuant to his attorney's request, the district has now initiated a multidisciplinary team evaluation of the pupil. The results of that evaluation, as well as any IEP and placement process that may follow, are subject to challenge

and review through the specific due process procedures set out in state and federal special education laws. Those issues are accordingly beyond the scope of this expulsion appeal. See, e.g., *Ernesto G. v. Waukesha School District Board of Education*, Decision and Order No. 92-EX-16, December 14, 1992; *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172, October 8, 1990; *Benjamin L. v. Maple School District Board of Education*, Decision and Order No. 93-EX-12, December 28, 1993. The pupil's parent and attorney may contact the district as well as my staff for further information regarding his rights under special education laws.

In reviewing the record in this case I find that the school district complied with all the procedural requisites in this matter. I am therefore compelled to affirm the expulsion decision as entered.

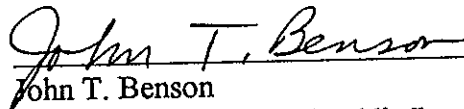
CONCLUSIONS OF LAW

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 Dwayne O [REDACTED] by the Milwaukee Public School District Board of Directors is affirmed.

Dated this 8th day of May, 1995.



John T. Benson
State Superintendent of Public Instruction