

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>BRANDON C [REDACTED]</p> <p>by the Florence County School District Board of Education</p>	<p>DECISION AND ORDER 94/95-EX-12</p>
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## 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 March 14, 1995 order of the Florence County School District Board of Education to expel Brandon C [REDACTED] for the remainder of the 1994-95 school year and for the entirety of the 1995-96 school year. This appeal, dated April 7, 1995, was filed by Brandon's father, and was received by the Department of Public Instruction on April 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 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 document dated March 8, 1995 entitled "Notice of Pupil Expulsion Hearing." This notice indicated a hearing would be held on March 14, 1995, which could result in Brandon's expulsion from school until his 21st birthday. The notice was sent separately to Brandon and his parents by certified mail. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of this notice. The notice alleged Brandon was guilty of repeated refusal or neglect to obey school rules. Attached to the notice were copies of the disciplinary referral slips that formed the basis of the school administration's allegations.

The hearing was conducted in closed session on March 14, 1995. Brandon and his parents appeared at the hearing without counsel. An audio tape of the expulsion hearing was made and is part of the record. The minutes of the expulsion hearing are also part of the record.

At the hearing, the school administration presented testimony on the various disciplinary referrals from September 8, 1994 to March 6, 1995. Mr. C█████ Brandon's father, asked the board to continue the expulsion hearing to give him an opportunity to hire an attorney. Mr. C█████ indicated his job keeps him out of the home for 21 days at a time and he only arrived home on the morning of the expulsion hearing. The record indicated no request for a continuance was made prior to the hearing even though the notice was received by Brandon and his mother on March 8, 1995. The school board denied Mr. C█████'s request for a continuance. Neither Brandon nor his parents questioned any witness or presented any testimony. Mr. C█████ stated he did not want to participate in the hearing without counsel present. The school district administration recommended that Brandon be expelled for the remainder of the 1994-95 school year and for the entirety of the 1995-96 school year. The administration also recommended

Brandon be allowed to come back to school at the start of the 1995-96 school year until he violates any school rule or rules.

After the hearing, the school board deliberated in closed session. The board decided to expel Brandon for the remainder of the 1994-95 school year and for the entirety of the 1995-96 school year. The school board further ordered that Brandon be allowed to return to school for the 1995-96 school year unless and until he violates any school rule or rules. The board found Brandon repeatedly refused or neglected to obey district rules and the interest of the school demands his expulsion. A copy of the order of expulsion containing the school board findings was mailed separately to Brandon and his parents.

#### 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 appeal letter in this case questions the action of the school board in denying Mr. C [REDACTED]'s request for a continuance. The record indicates Mr. C [REDACTED] made this request at the expulsion hearing on March 14, 1995. Mr. C [REDACTED] explained his work schedule keeps him out of the home for 21 days at a time. He further explained he arrived home on the morning of the scheduled expulsion hearing. The record in this case does not indicate any request for a postponement of the hearing prior to the request made at the hearing.

A prior decision held a failure to reschedule or delay an expulsion hearing may constitute reversible error. A student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Michaelene J. v. Washington School District Board of Education*, Decision and Order No. 161 (May 19, 1989) citing *Keller v. Fochs*, 385 F. Supp 262, 265 (E. D. of Wis. 1974). In this case Brandon and his mother had notice of the hearing on March 9, 1995. No request for a postponement was made prior to the hearing by any party. Given the facts of this case, I find it was within the discretion of the school board to deny the request for a continuance.

The school board expelled Brandon for the remainder of the 1994-95 school year and for the entirety of the 1995-96 school year. The school board order indicated Brandon may conditionally return to school during 1995-96 and "be allowed to participate unless and until the

pupil violates any school rule or rules." In so providing the district appears to be attempting to follow the Department's prior decisions governing this issue and I commend the board for this. Most of the history of the evolution of the Department's analysis of this issue<sup>1</sup> is recited in *Paul O. v. Florence County School District Board of Education*, Decision and Order No. 232 (June 28, 1994).<sup>2</sup> If the school administration wishes to discipline Brandon for a violation of a school rule or rules, it should follow the requirements of sec. 120.13(1)(b) and (c), Wis. Stats., and follow the school board policy on discipline.

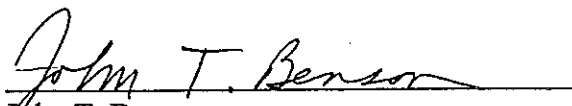
### CONCLUSIONS OF LAW

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 Brandon C. [REDACTED] by the Florence County School District Board of Education is affirmed.

Dated this 12th day of June, 1995.

  
John T. Benson  
State Superintendent of Public Instruction

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<sup>1</sup>This history also includes the *Education Forward* article "Law News," May, 1989 and *Jesse F. v. Stanley-Boyd School District Board of Education*, Decision and Order No. 189 (April 21, 1992), pages 5-6.

<sup>2</sup>This case is on appeal in the Circuit Court for Florence County, Case No. 94-CV-41.