

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

 In the Matter of the Expulsion of

ROBIN L. [REDACTED]

by the East Troy Community School
District Board of EducationDECISION AND ORDER
94/95-EX-14

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 April 24, 1995 decision of the East Troy Community School District Board of Education to expel Robin L. [REDACTED] for the remainder of the 1994-95 school year and for the first semester of the 1995-96 school year. This appeal, dated April 25, 1995, was filed by Robin's attorney, Michael T. Meurer, and was received by the Department of Public Instruction on April 26, 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 notice dated April 12, 1995 from the District Administrator of the East Troy Community School District indicating that a hearing would be held on April 24, 1995 which could result in Robin's expulsion from school until her 21st birthday. This notice was sent separately to Robin and her parents by certified mail. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The notice alleged Robin was guilty of behavior that endangered the health, safety or welfare of other students. The notice specifically alleged Robin was in possession of and used marijuana while on school grounds or at school activities under the supervision of school personnel. The notice also advised if the misconduct was proven, the board may also refer to Robin's complete disciplinary and academic record in considering whether to expel and for what period of time.

The record also contains the minutes of the school board expulsion hearing, a copy of the student handbook, Robin's academic and disciplinary record and several other documents submitted to the board at the expulsion hearing.

The hearing was held in closed session on April 24, 1995. Robin and her parents appeared at the hearing with counsel, Attorney Michael T. Meurer.

At the hearing the school district administration presented testimony concerning the allegations that Robin possessed and used marijuana while on school grounds or at activities under the supervision of school personnel. Robin and her parents were given an opportunity to speak and to respond to the allegations. The school administration recommended Robin's expulsion for the remainder of the 1994-95 school year and for the first semester of the 1995-96 school year.

After the hearing, the school board deliberated in closed session. On April 24, 1995, the school board decided to expel Robin for the remainder of the 1994-95 school year and for the first semester of the 1995-96 school year. The board further offered homebound instruction to Robin for the balance of the 1994-95 school year to permit Robin to receive credit for the classes in which she was currently enrolled. The school district clerk sent a letter separately to Robin and her parents. The letter, dated April 26, 1995, stated the school board expulsion decision and the offer of homebound instruction.

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 brief raises several issues. First, Robin argues the school administration failed to follow the drug and alcohol abuse policy published in the student handbook. She also argues the school board impermissibly considered prior conduct in deciding whether the grounds for expulsion existed and she was not given notice of that prior conduct. She further argues there was insufficient evidence to support a finding that she endangered the health, safety and welfare of others. Robin also disagrees that the interests of the school demand her expulsion. She also argues the expulsion is too harsh a penalty for the conduct involved. Finally, she argues the school board failed to mail a copy of the expulsion order to her and her parents as required by Wis. Stats., sec. 120.13(1)(c).

Because the board failed to comply with statutory requirements I am compelled to reverse this expulsion decision. The record in this case fails to reflect the finding by the board that the interests of the school demand the pupil's expulsion. Neither the minutes nor any written document indicates this finding was made by the board. This omission requires reversal. *Mark P. v. Marinette School District Board of Education*, Decision and Order No. 236 (August 26, 1994); *Michael S. v. Milwaukee Public Schools Board of School Directors*, Decision and Order No. 128 (May 10, 1985).

Further, the record in this case does not indicate a copy of the expulsion order was mailed to Robin and her parents as required by sec. 120.13(1)(c), Wis. Stats. The record indicates the school board clerk sent a letter to Robin and her parents on April 27, 1995. This letter informed Robin and her parents of the school board expulsion decision and the provision for homebound

instruction. No order accompanied this letter nor is there evidence an order was ever drafted. The statutory notice requirements of sec. 120.13(1)(c), Wis. Stats., have been held to be mandatory. The failure to send a copy of the expulsion order to the child and separately to the parents is reversible error. *Robert J.K. v. Manitowoc School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990).

It may be possible for the board, without completely rehearing the case, to correct its omissions. See decisions in *Nicole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); and *Nicole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

I reverse this decision very reluctantly. However, I am bound to review expulsion decisions for compliance with statutory procedure. This decision does not in any way condone the conduct of the pupil in this case. I also wish to commend the school district and the school board for offering homebound instruction to the pupil to permit her the opportunity for continued academic progress.

Robin raised several other issues in the appeal brief. Because I am reversing this decision on the basis of a failure to comply with the statute, it is not necessary to consider these other issues.

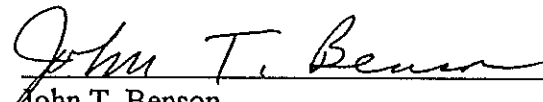
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Robin L. [REDACTED] by the East Troy Community School District Board of Education is reversed.

Dated this 21st day of June, 1995.



John T. Benson
State Superintendent of Public Instruction