

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

TONY R [REDACTED]

by the Lake Geneva J1 School District
Board of Education

DECISION AND ORDER
94/95-EX-19

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 May 26, 1995 order of the Lake Geneva J1 School District Board of Education to expel Tony R [REDACTED] from the Lake Geneva J1 School District for the remainder of the 1994-95 school year and for the entire 1995-96 school year. This appeal was filed by Tony's father and was received by the Department of Public Instruction on June 21, 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 letter entitled "Notice of Pupil Expulsion Hearing" dated May 4, 1995 from the District Administrator of the Lake Geneva J1 School District indicating a hearing would be held on May 23, 1995 which could result in Tony's expulsion from school. The notice was sent separately to Tony and his parents by certified mail. A corrected notice of hearing dated May 8, 1995 was also sent separately to Tony and his parents by certified mail. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The notice of hearing alleged Tony was guilty of repeated refusal or neglect to obey school rules and he engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The notice specifically listed 73 instances of violations of school rules from August 30, 1994 to May 3, 1995 and one instance of battery to a teacher. Tony was in eighth grade in the Lake Geneva J1 School District. The notice also advised that if the misconduct was proven, the school board may also consider Tony's complete disciplinary and academic records.

The record also contain excerpts from the school board policy which was in the parent/student handbook and Tony's academic and disciplinary records. An audio tape of the expulsion hearing was made and is part of the record.

The hearing was held in open session at the request of Tony and his father. Tony and his father appeared at the hearing without counsel. At the hearing the school district administration presented evidence on the two grounds for expulsion contained in the notice. The administration presented a 19 page document detailing the various violations of school rules. Tony and his father were given the opportunity to cross examine witnesses, present testimony and to respond

to the allegations. Tony's father specifically asked that the victim of the battery, the teacher, testify concerning the incident. The teacher then testified and answered questions asked by Tony's father. Tony's father then submitted to the school board an 11 page packet of materials from a psychiatric hospital. This information included a psychological evaluation, a discharge plan and summary and various other evaluations conducted by the medical staff concerning Tony.

After the hearing, the school board deliberated in closed session. The board found Tony guilty of repeated refusal or neglect to obey school rules and that he engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others at school. The school board further found the interests of the school demand the student's expulsion. The board ordered Tony's expulsion for the remainder of the 1994-95 school year and for the entire 1995-96 school year. The order of expulsion containing the findings of fact and conclusions of the school board, dated May 26, 1995, was mailed separately to Tony and his parents by certified mail.

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 District.*, 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 District 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.

Tony raises two issues concerning the fairness of the school board's decision. First, he argues he should not have been expelled because his conduct during the 1994-95 school year demonstrated substantial improvement from the previous school year. Second, he argues he should not have been expelled for the 1995-96 school year because he re-entered school after a hospitalization. He argues the school administration should have waited to see if the new medication would have been effective in modifying his conduct.

These issues were raised at the expulsion hearing and considered by the school board before the expulsion decision was made. The record reveals multiple instances of school rule violations during the 1994-95 school year. The evidence indicates Tony's conduct disrupted class on a continuing basis and affected the school's educational environment. The evidence indicates Tony returned to school following his hospitalization and with a new medication program. However, there were approximately 12 new referrals for rules violations after his

return to school. Further, his most serious conduct, battery to a teacher, occurred in May, 1995 well after Tony reentered school.

The school board exercised discretion in deciding to expel Tony. The decision to expel a pupil and the determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with sec. 120.13(1)(c), Wis. Stats. *Lon Gregg F. v. Port Washington-Saukville School District Board of Education*, Decision and Order No. 188 (February 10, 1987); *Nikkole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994). The board followed the procedural requirements of sec. 120.13(1)(c), Wis. Stats. This expulsion must be affirmed.

While this matter was pending, I received a letter from a psychiatrist at the Walworth County Department of Human Services. The letter detailed Tony's condition and medical history. The letter concluded with a request for a multidisciplinary team (M-team) evaluation and details concerning future medication and treatment plans for Tony. The letter was sent at the request of Tony's father. I provided a copy of this letter to the school administration for its review. Ordinarily, matters not submitted to the school board at the expulsion hearing will not be considered on appeal. Further, it has been consistently held that an expulsion appeal is not the proper forum to initially address special education issues. *Travis M. v. Tri-County School District Board of Education*, Decision and Order No. 241 (December 8, 1994). The school administration has responded to the psychiatrist's letter. The school administration has indicated it has initiated the M-team referral process and will conduct an evaluation for exceptional educational needs, assuming Tony's parents' consent. The school administration further indicated once the M-team evaluation has been completed, the expulsion order will be reviewed and modified, if needed, to reflect the findings of the M-team. If Tony's parents disagree with

the M-team's findings, they may request a due process hearing on the matter. They may also request an independent evaluation of the pupil. The independent evaluation would be at district expense if the conditions of sec. PI 11.08, Wis. Adm. Code, are met. The parents should call upon the district or staff at the Department of Public Instruction for further assistance in understanding the pupil's rights under special education law, if necessary.

I commend the school administration for their efforts throughout this case. They have dealt with a very serious pattern of conduct but continue to be concerned with Tony's educational needs. I hope Tony and his parents cooperate with the school administration and address Tony's future educational needs.

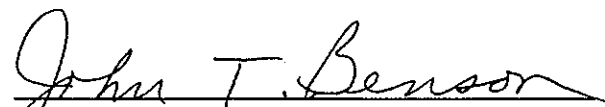
CONCLUSIONS OF LAW

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 Tony R. [REDACTED] by the Lake Geneva J1 School District Board of Education is affirmed.

Dated this 11th day of August, 1995.


John T. Benson
State Superintendent of Public Instruction