

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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 In the Matter of the Expulsion of

AARON B. [REDACTED]

by the Westfield School District  
Board of EducationDECISION AND ORDER  
94/95-EX-21

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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 action of the Westfield School District Board of Education to expel Aaron B. [REDACTED] an eight year old first grader, from the Westfield School District effective May 15, 1995 through the 1995-96 school year. This appeal, was filed by the pupil's mother, Marie B. [REDACTED] and was received by the Department of Public Instruction on July 18, 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

On May 9, 1995 the District Administrator of the Westfield School District sent a letter by certified mail to the parents and to the pupil notifying them of a hearing to consider the pupil's expulsion. The letter stated the hearing would be held on May 15, 1995. Nine incidents of misconduct by the pupil were specified as cause for the proposed expulsion. The letter indicated that a current copy of sec. 120.13(1)(c), Wis. Stats., was attached. (That same day, an amended notice regarding the hearing was sent to the parents and the pupil by certified mail which stated that the applicable statute had not been attached to the first notice and which did include a complete current copy of sec. 120.13(1)(c), Wis. Stats.)

The board accordingly met on May 15, 1995, and convened in closed session to consider the proposed expulsion. The pupil's mother appeared without counsel. The district presented oral and written testimony of school staff supporting the nine incidents of pupil misconduct specified in the notice of hearing. Those incidents were as follows:

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|----------|---|
| 01-10-95 | Fighting with another student   |
| 01-18-95 | Insubordination and swearing at a teacher   |
| 03-09-95 | Disruptive behavior, swearing at a teacher and other students   |
| 03-14-95 | Threw markers at other children and being insubordinate   |
| 03-15-95 | Physical aggression toward other children   |
| 03-16-95 | Swearing, physical aggression, insubordination, disruptive behavior.<br>Suspended.  |
| 03-22-95 | Fighting with another student   |
| 04-26-95 | Insubordination, defiance   |
| 05-03-95 | Hit another student with a stick, use of profanity, physical aggression,<br>insubordination. Suspended, pending hearing before board. |

The record reveals that the pupil's parents disagreed with and were at times openly hostile to the school's approach to behavior issues. The record also shows that the pupil

witnessed some unpleasant exchanges between his parents and school staff regarding the pupil's behavior.

At the hearing, the pupil's mother stated she had "signed [the pupil] up" for counselling. The record does not reflect any efforts by the school to evaluate the pupil for potential exceptional educational needs or to explore alternative education programs for the child.

After the hearing, the school board deliberated in closed session. It then returned to open session and found that the pupil had engaged in the conduct alleged, that this conduct violated school rules and endangered the health, safety or property of others and that the interests of the school demanded the pupil's expulsion. The board then voted to expel the pupil through the end of the 1995-96 school year. Findings and an Order to this effect were sent to the parents and the pupil 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.

Because the district in this case complied with all statutory requirements under sec. 120.13(1)(c), Wis. Stats., I must affirm this expulsion decision. However, I am compelled to comment on a circumstance in which a school board determined that expulsion was the only appropriate measure available to address this eight year old child's behavior. I recognize that an eight year old can, and in this case did, present extremely disruptive behavior. I further recognize that other children have a right to learn in a safe and stable school environment, that schools need parental support and that disruptive children with uncooperative parents can present extreme challenges undermining the best efforts of educators.

I also know that depriving an eight year old child of an education is a drastic action that should not even be considered until other available options have been tried and have failed. In our democratic society we cherish both the value of the individual and the potential of youth. Schools are in the business of educating children and helping them to realize their potential. We accept that children who come to a school have a very wide range of backgrounds, abilities and needs.

Highly structured educational programs do exist for children who have severe behavioral problems. In addition, procedures are available to address a parent's opposition to a school's

recommendations and efforts. I urge the district to reconsider whether it has fully examined and pursued all available and appropriate options for this child. My staff will, upon request, consult with the district regarding options that are utilized by other school districts in Wisconsin.

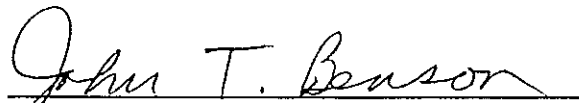
### CONCLUSIONS OF LAW

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 Aaron B. [REDACTED] by the Westfield School District Board of Education is affirmed. However, I urge the district to reconsider whether it has fully examined and pursued all available and appropriate options for this child.

Dated this 15th day of September, 1995.

  
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John T. Benson  
State Superintendent of Public Instruction