

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

PAUL R [REDACTED]

by the East Troy Community School District
Board of Education

DECISION AND ORDER
94/95-EX-23

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 July 24, 1995 order of the East Troy Community School District Board of Education to expel Paul R [REDACTED] for the remainder of the 1994-95 school year and for the first semester of the 1995-96 school year. This appeal, dated August 8, 1995, was filed by Paul's father, and was received by the Department of Public Instruction on August 10, 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 July 12, 1995 from the Superintendent of Schools of the East Troy Community School District indicating a hearing would be held on July 24, 1995 to consider a correction to its previous expulsion decision of April 24, 1995. The notice was sent by regular and certified mail to Paul and his parents. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The notice alleged Paul was engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety or others. The notice specifically alleged Paul possessed and used marijuana while on school grounds or at activities under the supervision of school personnel. The record also contains the minutes of the July 24, 1995 hearing.

The hearing was held in closed session on July 24, 1995. Paul and his mother appeared at the hearing without counsel.

At the hearing the school board indicated it would rely on the evidence presented at the prior expulsion hearing on April 24, 1995. When asked if she wished to make any statements, Paul's mother stated, "No comment." The administration then adopted a resolution expelling Paul from school for the remainder of the 1994-95 school year and for the first semester of the 1995-96 school year. The resolution containing the school board findings and the order of expulsion were mailed separately to Paul and his parents by regular and certified mail. The board found Paul possessed and used marijuana while on a school field trip and on school property. This conduct, according to the board's findings, endangered the property, health or safety of others. The board also found the interests of the school demanded the pupil's expulsion.

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.

The appeal letter in this case raises several issues. First, Paul questions the fairness of the school board in rehearing the expulsion case after it had been reversed by the State Superintendent of Public Instruction. Paul had previously been expelled by the East Troy Community School District Board of Education on April 25, 1995 for conduct that endangered the health, safety or welfare of other students. Paul's father appealed that expulsion decision to

the State Superintendent of Public Instruction. I reversed the expulsion decision because the record failed to indicate that the school board made a finding that the interests of the school demands the pupil's expulsion. Further, the record failed to indicate a copy of the expulsion order was mailed to Paul and his parents as required by sec. 120.13(1)(c), Wis. Stats. *Paul R. v. East Troy Community School District Board of Education*, Decision and Order No. 254 (June 21, 1995). Following that decision, the school board scheduled another hearing and complied with the procedural requirements of sec. 120.13(1)(c), Wis. Stats. Paul argues this is double jeopardy. The protection against double jeopardy is guaranteed by Article I, sec. 8 of the Wisconsin Constitution and the Fifth Amendment to the United States Constitution. The protection afforded by the double jeopardy clause includes protection against a second prosecution for the same offense after an acquittal, a protection against a second prosecution for the same offense after conviction, and a protection against multiple punishment for the same offense. *State v. Bowden*, 93 Wis. 2d 574, 288 NW 2d 139 (1980). None of these considerations is applicable to a pupil expulsion hearing.

Paul further argues the school board should be required to follow the appeal procedure of sec. 120.13(1)(c), Wis. Stats., because the decision was initially reversed. If the school board wanted to challenge my decision in the prior expulsion appeal, an appeal to the circuit court would have been appropriate. The school board chose not to challenge that decision. Therefore, an appeal was unnecessary.

Paul also argues the school board should not have been advised how to commence a new expulsion hearing. In *Paul R. v. East Troy Community School District Board of Education*, Decision and Order No. 254 (June 21, 1995), I indicated:

"It may be possible for the board, without completely rehearing the case, to correct its omissions. See decision 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 was not giving legal advice nor was I biased toward one party or the other. I simply cited prior decisions of the State Superintendent that dealt with similar issues.

Finally, Paul argues the school board has adopted a new drug policy since the time of his expulsion. Paul concludes because of the new policy, his expulsion order should be modified. Paul also enclosed a copy of a newspaper article that discussed the policy. Paul's conduct must be judged by the school district policy in effect at the time of the conduct. A school board is always free to modify an expulsion order and permit a pupil to attend school. However, given the record in this case, I cannot require the school board to do so.

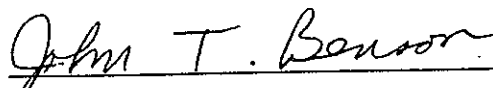
CONCLUSIONS OF LAW

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 Paul R. [REDACTED] by the East Troy Community School District Board of Education is affirmed.

Dated this 9th day of October, 1995.



John T. Benson

State Superintendent of Public Instruction