

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JENNIFER C [REDACTED]

by the Winter School District
Board of Education

DECISION AND ORDER

95/96-EX-1

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 October 9, 1995 order of the Winter School District Board of Education to expel Jennifer C [REDACTED] an eighth grade pupil, from the school district for the balance of the 1995-96 school year. This appeal, dated October 6, 1995, was filed by Jennifer's mother and was received by the Department of Public Instruction on October 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 letter dated September 21, 1995 from the District Administrator of the Winter School District. The letter advised that a hearing would be held on October 4, 1995 which could result in Jennifer's expulsion from school until her 21st birthday. This letter was sent separately to Jennifer and her mother by certified mail. The letter alleged Jennifer was guilty of repeated refusal or neglect to obey school rules. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the second page of the letter. Attached to the letter were copies of the "Student Management Referral" sheets which formed the basis for the expulsion request. The record also contained the minutes of the school board meeting that pertained to this expulsion hearing. An audio tape of the expulsion hearing was made and is also part of the record.

The hearing was held in closed session on October 4, 1995. Jennifer and her mother appeared at the hearing without counsel. At the hearing the school administration presented evidence on the grounds for expulsion. Jennifer and her mother were given the opportunity to ask questions, to present evidence, and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Jennifer repeatedly neglected or refused to obey school rules and the interests of the school demand her expulsion. The board ordered Jennifer expelled for the remainder of the 1995-96 school year. The Order of Expulsion containing the Findings of Fact and Conclusions, dated October 9, 1995, was mailed separately to Jennifer and her mother.

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 two issues. First, Jennifer argues one of the findings of fact made by the school board is unsupported by the record. The rule violations in this case included skipping study hall, shooting spit wads, chewing gum, failing to obey teachers' directions, smoking on school premises, leaving school grounds without permission, threatening another student, disrupting class and not attending an after school detention. This conduct

occurred between September 7, 1995 and September 19, 1995. The evidence at the hearing indicated one suspension had been ordered by the school. The Order of Expulsion contains a finding that Jennifer was suspended "on more than one occasion." While this finding is not supported by the evidence at the hearing, there was sufficient evidence from which the board could conclude Jennifer repeatedly violated school rules. If there is any reasonable view of the evidence which will sustain the board's findings, these findings must be upheld. *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

Second, Jennifer argues the school board discriminated against her because the board failed to properly consider the personal problems she was having at the time of the school rule violations. The audio tape of the hearing indicated Jennifer and her mother were asked if they wanted the board to consider any evidence on Jennifer's personal situation. Any such evidence could bear on whether Jennifer should be expelled or for what length of time. Neither Jennifer nor her mother wanted to present any such evidence for the board's consideration. Such evidence was raised in the appeal letter. Matters not raised before the school board cannot be raised the first time on appeal. *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

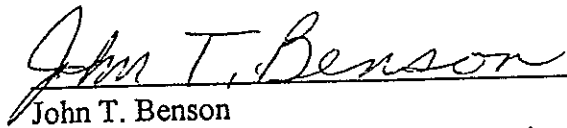
CONCLUSIONS OF LAW

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 Jennifer C. [redacted] by the Winter School District Board of Education is affirmed.

Dated this 6th day of December, 1995.



John T. Benson
State Superintendent of Public Instruction