

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ELENA C [REDACTED]

by the Janesville School District
Board of Education

DECISION AND ORDER
95/96-EX-3

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 16, 1995 order of the Janesville School District Board of Education to expel Elena C [REDACTED] from the school district for the balance of the 1995-96 school year. This appeal was filed by Elena's mother and was received by the Department of Public Instruction on October 23, 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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a letter dated September 22, 1995 from the District Administrator of the Janesville School District. The letter indicated a hearing would be held on October 2, 1995 which could result in Elena's expulsion from school. The letter was mailed separately to Elena and her parent. The letter alleged Elena physically attacked another student in violation of school board policy. The applicable school board policies were enclosed with the letter. The record also contains the minutes of the school board expulsion hearing, reports on the incident in question and documents concerning Elena's disciplinary and academic record.

The hearing was held in closed session on October 2, 1995. Elena's mother appeared at the hearing without counsel. Elena did not appear at the hearing.

At the hearing the school district administration presented evidence on the allegation that Elena physically attacked another student on school grounds. Elena's mother made a statement to the board and read a statement from Elena, a copy of which is included in the record.

After the hearing, the school board deliberated in closed session. The board decided to expel Elena for the balance of the 1995-96 school year. A letter dated October 3, 1995, sent separately to Elena and her parents, advised them of the school board decision. A document entitled "Findings and Order," dated October 16, 1995 was prepared and signed by the school board clerk.

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 interest of the school district demands the pupil's expulsion.

No briefs were filed by either party in this case.

Because the board failed to comply with the 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 interest of the school demands 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 Elena and her parents as required by sec. 120.13(1)(c), Wis. Stats. The record indicates the school board clerk sent a letter to Elena and her parent dated October 3, 1995. This letter informed Elena and her parent of the school board expulsion decision. No order accompanied this letter. The expulsion order was dated October 16, 1995 and there is no indication in this record that a copy of this order was mailed to Elena and her parents. The statutory notice requirements in 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).

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 most reluctantly. This case involves a physical attack on another pupil on school premises. This conduct is most serious and this decision in no way should be interpreted as condoning the conduct of the pupil in this case. However, I am required to comply with the statutory requirements in these matters, and reversal in this case is mandatory.

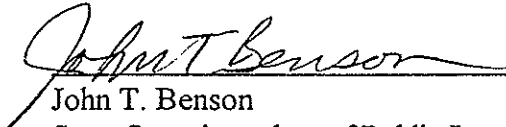
CONCLUSIONS OF LAW

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 Elena C [REDACTED] by the Janesville School District Board of Education is reversed.

Dated this 12th day of December, 1995.



John T. Benson
State Superintendent of Public Instruction