

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

CLIFTON V [REDACTED]

by the Eau Claire Area School District
Board of Education

DECISION AND ORDER
95/96-EX-5

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 12, 1995 order of the Eau Claire Area School District Board of Education to expel Clifton V [REDACTED], a tenth grade student, from the Eau Claire Area School District through the end of the 1995-96 school year. This appeal was filed by Clifton and his parents and was received by the Department of Public Instruction on November 7, 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 Notice of Pupil Expulsion Hearing dated September 8, 1995. This Notice advised that a hearing would be held on September 28, 1995 which could result in Clifton's expulsion from school until his 21st birthday. The Notice of Pupil Expulsion Hearing was sent separately to Clifton and his father. The Notice alleged Clifton 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. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the Notice. The record also contains the minutes of the school board special meeting on the expulsion and an audio tape of the expulsion hearing.

The hearing was held in closed session on September 28, 1995. Clifton and his parents appeared at the hearing without counsel. At the hearing the school administration presented evidence on the grounds for expulsion contained in the Notice. Clifton and his parents were given the opportunity to cross examine witnesses, present witnesses and testimony and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Clifton had 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 school board further found that the interests of the school demand the student's expulsion. The Order for Expulsion containing the Findings of Fact and Conclusions of the school board, dated October 12, 1995, was mailed separately to Clifton and his parents. The board ordered Clifton expelled through the end of the 1995-96 academic year.

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, Clifton argues the school administrator involved in this incident had continually harassed him and tried to have him expelled since December 1, 1994. Second, he argues the school administrators who testified at the expulsion hearing lied and have no credibility.

The testimony at the hearing indicated a school administrator observed Clifton driving

his car in the school parking lot after school had begun for the day. The administrator said he approached the car and asked Clifton to step out of the vehicle so he could talk to him. Clifton locked both the passenger and driver's side doors and refused to leave the vehicle. The administrator testified Clifton then backed his car out of the parking stall and was preparing to leave. The administrator then stepped in the path of the vehicle. Clifton then continued to drive the car forward and intentionally bumped the legs of the school administrator on two separate occasions. Another school administrator also testified to the portion of the incident he had observed. Clifton testified he would not leave the car because he was afraid of what the school administrator would do to him. He further stated the school administrator had harassed him over a period of time and he was afraid of a confrontation with him.

The issues of harassment by a school administrator and the credibility of the witnesses were squarely before the school board. The credibility of the witnesses is judged by the school board. It is the province of the board to evaluate the evidence and to determine whom they believe. *Nikkole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994), and *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985). The State Superintendent has consistently ruled that the school board's findings will be upheld if any reasonable view of the evidence sustains them. *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). The school board exercised its discretion in this case. The board's exercise of discretion was within its statutory power. *Tony R v. Lake Geneva J1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995). The board followed the procedural requirements of sec. 120.13(1)(c), Wis. Stats. This expulsion must be affirmed.

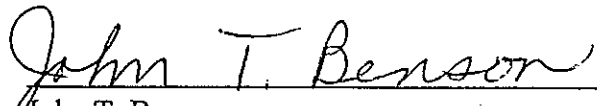
CONCLUSIONS OF LAW

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 Clifton V [REDACTED] by the Eau Claire Area School District Board of Education is affirmed.

Dated this 5th day of January, 1996.


John T. Benson
State Superintendent of Public Instruction