

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

ERNESTO J. G [REDACTED]

by the Waukesha School District
Board of Education

DECISION AND ORDER

95/96-EX-6

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 10, 1995 order of the Waukesha School District Board of Education to expel Ernesto J. G [REDACTED] from the Waukesha School District through the 1996-97 school year. This appeal, dated November 13, 1995, was filed by Ernesto's mother and was received by the Department of Public Instruction on November 16, 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 entitled "Notice of Pupil Expulsion Hearing" dated October 10, 1995 from the Executive Director of student Services of the Waukesha School District. The letter advised that a hearing would be held on October 16, 1995 concerning the expulsion of Ernesto from the Waukesha School District. The letter was sent separately to Ernesto and his mother by regular and certified mail. The letter alleged that Ernesto repeatedly refused to obey school rules. The letter specifically alleged that Ernesto repeatedly refused to obey school rules between August 25 and October 10, 1995, including insubordination, swearing and violating a contract he signed to provide mutual understanding of acceptable and unacceptable conduct. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. The record also contains records of Ernesto's disciplinary and attendance history as well as his report card and a copy of the contract above referenced. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on October 16, 1995. Neither Ernesto nor his mother appeared at the hearing. Also, no attorney appeared on their behalf. At the hearing the school district administration presented evidence concerning the grounds for expulsion.

After the hearing, the school board deliberated in closed session. The board found that Ernesto repeatedly refused to obey school rules between August 25, 1995 and October 10, 1995 including insubordination, swearing, and violating the above-referenced contract. 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 Law of the school board, dated

October 18, 1995, was mailed separately to Ernesto and his mother by first class and certified mail. The order stated Ernesto was expelled until through the 1996-97 school 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.

In her appeal letter, Ernesto's mother states that the expulsion seems a bit harsh and that her son does not deserve, nor will he benefit from expulsion. It is unclear whether Ernesto's

mother is challenging the decision to expel or the length of the expulsion. However, it is a long standing general rule that harshness of disciplinary measures is a matter of discretion for the local school board. In the absence of unusual circumstances, I have not reviewed this issue since the local school board is in the best position to evaluate the evidence and make the decision on appropriate discipline. *Travis M. v. Tri-County School District Board of Education*, Decision and Order No. 241 (December 8, 1994); *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988). Additionally, I have repeatedly held that the length of expulsion is generally within the discretion of the school board as long as the board complies with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. *Rebecca S. v. Janesville School District Board of Education*, Decision and Order No. 248 (May 8, 1995); *Brad O. v. Madison Metropolitan School District Board of Education*, Decision and Order No. 246 (March 16, 1995); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993).

A second issue is worthy of discussion. The school board based Ernesto's expulsion on his repeated refusal to obey school rules between August 25, 1995 and October 10, 1995, including insubordination, swearing, and violating the contract he signed regarding his behavior. The record includes a copy of the contract Ernesto entered into on September 11, 1995. The contract stated that any violation of the stated conditions could result in his expulsion. The record also contains minutes of the hearing which detail the various incidents Ernesto engaged in subsequent to the signing of the contract that constitute violations.

However, the minutes also include reference to several rule violations that Ernesto engaged in prior to his signing the contract. Where expulsion is based on repeated violations of school rules, the record should contain evidence that the student has been provided with a list of

those rules and the consequences for violating them. *Hope B. v. Randolph School District Board of Education*, Decision and Order No. 225 (April 12, 1994) and *Antonio M. v. Kenosha Unified School District Board of Education*, Decision and Order No. 176 (April 18, 1991).

In this case the district presented evidence of rule violations Ernesto committed prior to his signing the contract without proving the existence of the rules or that Ernesto was aware of the consequences of violating them. This omission does not call for reversal in this case since the grounds for expulsion were adequately proven based on several serious violations of the contract. However, the better practice is to include in the record evidence of the existence of all rules allegedly violated as well as evidence the student received prior notice of the consequences for rule violations.

In reviewing the record in this case I find the district complied with all the procedural requirements of sec. 120.13, Wis. Stats. I therefore affirm this expulsion.

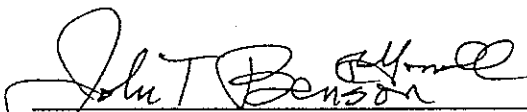
CONCLUSIONS OF LAW

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 Ernesto J. G [REDACTED] by the Waukesha School District Board of Education is affirmed.

Dated this 12th day of January, 1996.

A handwritten signature in cursive script that reads "John T. Benson". The signature is written in black ink and is positioned above a horizontal line.

John T. Benson
State Superintendent of Public Instruction