

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
CHRISTOPHER D [REDACTED]
by the Hartland/Lakeside Joint No. 3
School District Board of Education

DECISION AND ORDER
95/96-EX-8

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 action of the Hartland/Lakeside Joint No. 3 School District Board of Education to expel Christopher D [REDACTED] from the Hartland/Lakeside Joint No. 3 School District effective November 9, 1995. This appeal was filed on behalf of the pupil by Attorney Daniel P. Fay, and was received by the Department of Public Instruction on November 20, 1996.

On December 27, 1995, the Department received a letter from counsel for the school district stating that the Board of Education voted to rescind the expulsion order of November 9, 1995 concerning Christopher D [REDACTED]. Accordingly, it is no longer necessary to process this appeal and I make the following findings and conclusions.

Findings of Fact

1. The Department received the above referenced appeal letter from Attorney Fay on November 20, 1995.

2. On November 24, 1995 the Department sent a letter acknowledging receipt of the appeal to Attorney Fay and District Administrator Roger Lowney.
3. By letter dated January 15, 1996, Attorney Michael Aldana, on behalf of the school district, advised the Department that the Hartland/Lakeside Joint No. 3 School District Board of Education had a special meeting on December 27, 1995, during which the board rescinded the expulsion order of Christopher D [REDACTED]. A copy of the special meeting minutes is attached hereto and incorporated herein as Exhibit A.

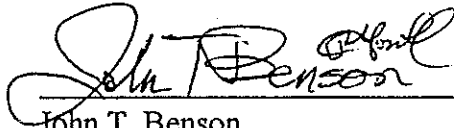
Conclusions of Law

1. Pursuant to sec. 120.13(1)(c), Wis. Stats., this Department has jurisdiction of this appeal.
2. The Hartland/Lakeside Joint No. 3 School District Board of Education's rescision of the expulsion of Christopher D [REDACTED] renders this expulsion appeal moot.

Order

IT IS THEREFORE ORDERED that the above entitled expulsion appeal of Christopher D [REDACTED] is dismissed.

Dated this 18th day of January, 1996.



John T. Benson
State Superintendent of Public Instruction

HARTLAND/LAKESIDE ELEMENTARY SCHOOLS
Joint School District No. 3

SPECIAL SCHOOL BOARD MEETING
December 27, 1995

1. A special meeting of the governing Board of the Hartland/Lakeside School District was called order at 9:00 a.m. on December 27, 1995 at Hartland Elementary South by Vice-President, Susanna Toumanoff.
2. A quorum was established with the following Board Members present:

David Marlow
Susanna Toumanoff

Pam Erickson

Roger Lowney, Superintendent of Schools was also present and recorded the minutes.

3. ADJOURN TO CLOSED SESSION

ERICKSON/MARLOW

ACTION

Moved and seconded to convene to closed session pursuant to Wisconsin Statute 19.85(1)(f). A roll call vote was taken:

David Marlow - yes
Susanna Toumanoff - yes
Pam Erickson - yes

4. RECONVENE TO OPEN SESSION

ERICKSON/MARLOW

ACTION

Moved and seconded to reconvene to open session.
Motion carried unanimously.

ERICKSON/MARLOW

ACTION

Moved and seconded to rescind expulsion orders of two Hartland North Middle School Students dated November 9, 1995.
Motion carried unanimously.

5. ADJOURN

ERICKSON/MARLOW

ACTION

Moved and seconded to adjourn the meeting at 9:16 a.m.
Motion carried unanimously.

Exhibit A

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JARED L [REDACTED]

by the Northland Pines School District
Board of Education

DECISION AND ORDER
95/96-EX-7

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 November 14, 1995 order of the Northland Pines School District Board of Education to permanently expel Jared L [REDACTED], a 16 year old student. This appeal was filed by Jared's mother and was received by the Department of Public Instruction on November 20, 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 Expulsion Hearing" dated November 2, 1995. This notice advised a hearing would be held on November 9, 1995 which could result in Jared's expulsion from school. The notice was sent separately to Jared and his mother. The notice alleged Jared was guilty of repeated refusal or neglect to obey the rules. An attachment to the notice listed the date and nature of each rule violation. The notice indicated a copy of sec. 120.13(1)(c), Wis. Stats., was reproduced on the reverse side of the notice. The record also contains the minutes of the school board meeting that considered the expulsion and Jared's academic and disciplinary record. An audio tape of the hearing was made and is also part of the record.

The hearing was conducted in closed session on November 9, 1995. Jared and his mother appeared at the hearing without counsel.

At the hearing the school administration presented evidence on the basis for expulsion contained in the notice. Jared and his mother were given an opportunity to ask questions, present evidence, and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Jared guilty of repeated refusal or neglect to obey school rules and found the interest of the school demands the pupil's expulsion. The Findings and Order for Pupil Expulsion dated November 14, 1995, was mailed separately to Jared and his mother. The order stated Jared was permanently expelled from the school district, but when the student reaches the age of 17 the district would approve his participation in the G.E.D. program.

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.

No briefs were filed by either party. Because the school district failed to comply with the statutory requirements I am compelled to reverse this expulsion decision. The district failed to provide a complete copy of sec. 120.13(1)(c), Wis. Stats. with the notice of expulsion. The version of the statute used by the district failed to include the statutory amendment contained in 1995 Act 32 which became effective August 24, 1995. The State Superintendent has long

interpreted the requirement of furnishing a complete, current copy of the statute as mandatory and has reversed expulsions for failure to provide this to the pupil and the parent. *Ernestina G. v. Wautoma Area School District Board of Education*, Decision and Order No. 250 (June 1, 1995); *Chad K. v. Wittenberg-Birnamwood School District Board of Education*, Decision and Order No. 168 (May 7, 1990). (In an attempt to avoid this type of error, I sent a memo on August 18, 1995 to all school districts in the state advising of the statutory change in 1995 Act 32 and advising of the requirement to use a complete, current version of the statute.)¹

Because the district failed to comply with the foregoing statutory requirements, I must reverse this expulsion decision. This decision in no way condones the actions of the pupil in this case or minimizes the concerns of the school district of the board. If there is to be a legally valid expulsion, the process must be repeated absent any procedural error.

CONCLUSIONS OF LAW

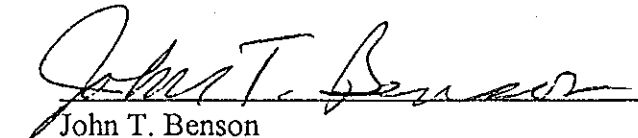
Based upon my review of the record in this case and the findings set out above, I conclude that the school board failed to comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

¹1995 Wisconsin Act 75, effective December 5, 1995, has also amended sec. 120.13(1)(c). On November 27, 1995 I sent a memo to all school districts advising them of the statutory change and enclosed a current, complete version of the statute.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jared L [REDACTED] by the Northland Pines School District Board of Education is reversed.

Dated this 19th day of January, 1996.


John T. Benson
State Superintendent of Public Instruction