

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

CHAD S [REDACTED]

by the Hartford Union High School District
Board of Education

DECISION AND ORDER
95/96-EX-11

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 22, 1995 order of the Hartford Union High School District Board of Education to permanently expel Chad S [REDACTED], a 15 year old pupil, from the school district. This appeal, dated December 8, 1995, was filed by Chad's parents and was received by the Department of Public Instruction on December 11, 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 October 30, 1995 from the District Administrator of the Hartford Union High School District. The letter advised that a hearing would be held on November 14, 1995 which could result in Chad's expulsion from school. This letter was sent separately to Chad and his parents by certified mail. The letter alleged Chad engaged in conduct which endangers the property, health or safety of others at school. The letter specifically alleged Chad purchased, possessed and attempted to resell a controlled substance. A current copy of sec. 120.13(1)(c), Wis. Stats., was attached to the notice. The record also contains documents relating to the particular conduct alleged in the notice of expulsion hearing, the student's complete discipline and academic record, the written recommendation for expulsion from the district administrator and various other documents offered at the hearing. The minutes of the board of education meeting and an audio tape of the hearing are also part of the record.

The hearing was held in closed session on November 14, 1995. Chad and his parents appeared at the hearing without counsel. At the hearing the school administration presented evidence on the ground for expulsion alleged in the notice. Chad and his parents were given the opportunity to cross examine witnesses, to present evidence and witnesses and to respond to the allegations.

After the hearing, the board deliberated in closed session. The board found that Chad 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 board further found that the interest of the school demands Chad's expulsion. The board permanently expelled Chad from school. The order of expulsion containing the Findings and Decision of the board was dated November 22, 1995. It was mailed separately to Chad and his parents by certified mail.

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 (Ct. App., 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.* In a related context, the court of appeals ruled this dictum has now become "embedded in Wisconsin school law." *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, No. 94-0199, Dist. IV, Dec. 28, 1995, Slip Op., p. 14. 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.

Both parties have submitted briefs in this case. Chad raises two issues for consideration. First, he argues the copy of sec. 120.13(1)(c), Wis. Stats., attached to the expulsion notice obscured the notification of his rights. Chad argues because other portions of sec. 120.12, 120.13

and 120.14 were also included in the statutes attached to the notice, his due process rights were violated because his rights were essentially "concealed" from him.

Wis. Stats. sec. 120.13(1)(c)3. requires that the paragraph be printed in full on the face or the back of the notice. As the school district correctly points out, prior decisions of the State Superintendent have found that attaching the statutory language to the expulsion notice is sufficient. *Miranda V. v. Howard-Suamico School District Board of Education*, Decision and Order No. 224 (March 22, 1994). The fact that other portions of state law were attached with the appropriate statute is not reversible error. The expulsion notice clearly made reference to sec. 120.13(1)(c) and it was attached to the expulsion notice.

Second, Chad raises several objections to the procedures employed at the expulsion hearing. He argues his due process rights were violated because the school board failed to advise him and his parents of their right to call witnesses, cross examine witnesses, and present evidence. He further argues the board failed to "swear in" witnesses and admit documentary evidence. Finally, he argues the school district erred by making its expulsion recommendation after the testimony was completed. I have reviewed the entire record in this case and find no procedural violations. The expulsion notice clearly advised Chad and his parents of their rights to present witnesses, cross examine witnesses and present evidence. Further, the school board president, at the beginning of the expulsion hearing, advised Chad and his parents of the procedures to be followed. Further, there is nothing in the record to indicate Chad or his parents were misled or confused by the procedures at the hearing. Chad, his parents and a family friend addressed the board at several points throughout the hearing. As the school district correctly points out, basic fairness and integrity in the fact finding process are the important considerations. *Racine Unified School District v. Thompson*, 107 Wis. 2d 657 (Ct. App., 1982). Likewise, I find the procedures

employed at the hearing with respect to the admission of documents and the swearing of witnesses did not result in an unfair hearing.

In addition, the school board's procedure in receiving the administration's recommendation for expulsion after listening to the other testimony is not error. The board clearly advised the parties at the hearing and during the hearing of the various "parts" of the hearing. The board first heard evidence on the specifics of the alleged conduct that served as the ground for the expulsion. Then the board heard evidence on what the appropriate response should be if the ground for expulsion were proven. Chad and his parents were advised by the expulsion hearing notice that expulsion was a possible outcome of the hearing.

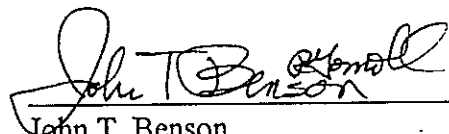
CONCLUSIONS OF LAW

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 Chad S [REDACTED] by the Hartford Union High School District Board of Education is affirmed.

Dated this 9th day of February, 1996.



John T. Benson
State Superintendent of Public Instruction