

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

PHILLIP C [REDACTED]

by the Wausaukee School District
Board of Education

DECISION AND ORDER
95/96-EX-17

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 December 20, 1995 decision of the Wausaukee School District Board of Education to expel Phillip C [REDACTED] (the pupil) from the Wausaukee School District until the district completed an evaluation to determine whether he had exceptional educational needs (EEN) under subchapter V of chapter 115, Wis. Stats. This appeal, dated January 23, 1996, was filed by counsel for the pupil and was received by the Department of Public Instruction on January 24, 1996.

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 December 15, 1995 from the District Administrator of the Wausaukee School District to the pupil's grandparents. The pupil was apparently residing with his grandparents following the recent death of his mother. The letter advised that a hearing would be held on December 20, 1995 to consider the pupil's expulsion. The district acknowledges that it failed to send the letter to the pupil in addition to the grandparents. The letter alleged that the pupil had not followed a contract of behavior he had previously signed, specifically he was truant from school on December 4, 1995. The record also contains minutes of the school board expulsion hearing.

The hearing was held on December 20, 1995. The pupil, his counsel and his grandfather appeared at the hearing. At the hearing the school district administration presented evidence concerning the grounds for expulsion, which included reference to the pupil's failure to follow school rules as well as his problems with attendance and motivation. The pupil's counsel requested that he be evaluated for EEN and that he be returned to school pending that evaluation.

The school board decided to expel the pupil until the EEN evaluation was completed. Reviewing the record, it is unclear what conduct the board found the pupil to have engaged in warranting expulsion. The record does not contain any indication that the board found that the interests of the school demanded expulsion. The record contains a letter dated January 4, 1996 from the district administrator to the pupil's grandfather advising that the pupil was expelled

until completion of his EEN evaluation. The district acknowledges that it failed to send such a letter to the pupil. The letter did not contain findings upon which the board relied in making its expulsion decision.

Following the pupil's expulsion, he was evaluated by the district and identified as a child with EEN. According to the district, the period of expulsion is over and the pupil has been attending school and receiving EEN services since January 24, 1996.

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.* 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 interests of the school district demand the pupil's expulsion.

Based upon multiple procedural errors, I must reverse this expulsion decision. The pupil did not receive separate notice of the expulsion hearing. The notice of hearing that was provided to his grandparents failed to specify statutory grounds which would support expulsion. The record fails to indicate the findings the board made upon which expulsion was based, including a finding that the interests of the school demanded expulsion. Finally, the pupil was not provided with any order or notice of expulsion. Each of these errors requires reversal. See, e.g., *Russell B. v. Muskego-Norway School District Board of Education*, Decision and Order No. 175 (February 28, 1991) and *Chad K. v. Wittenberg-Birnamwood School District Board of Education*, Decision and Order No. 168 (May 7, 1990).

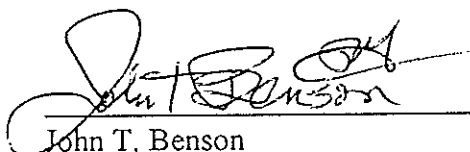
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Phillip C [REDACTED] by the Wausaukee School Board of Education is reversed.

Dated this 22nd day of March, 1996.



John T. Benson
State Superintendent of Public Instruction