

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JESSE B [REDACTED]

by the Winter School District
Board of Education

DECISION AND ORDER
95/96-EX-19

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 January 23, 1996 order of the Winter School District Board of Education to expel Jesse B [REDACTED], an eleventh grade student, for the balance of the 1996-96 school year. This appeal, dated January 29, 1996, was filed by Jesse's mother and was received by the Department of Public Instruction on January 31, 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 entitled dated January 3, 1996 from the District Administrator of the Winter School District. The letter advised a hearing would be held on January 15, 1996 which could result in Jesse's expulsion from school until his twenty-first birthday. The letter alleged Jesse was guilty of repeated refusal or neglect to obey school rules. Attached to the letter were copies of the disciplinary referrals for the 1995-96 school year. The letter was sent separately to Jesse and his mother. A current copy of sec. 120.13(1)(c), Wis. Stats., was attached to the letter. The record also contains the minutes of the school board expulsion hearing and an audio tape of the expulsion hearing.

The hearing was held on January 15, 1996. Jesse and his mother appeared at the hearing and were represented by Attorney Curt Lein. At the hearing the school administration presented evidence on the grounds for expulsion contained in the notice of expulsion hearing. Jesse, his mother and their attorney were given the opportunity to cross examine witnesses, present witnesses and to respond to the allegations.

After the hearing, the board deliberated in closed session. The board found Jesse guilty of repeated refusal or neglect to obey school rules and further found that the interests of the school demand the Jesse's expulsion. The order of expulsion containing the Findings of Fact and Conclusions of the school board, dated January 23, 1995, was mailed separately to Jesse and his mother. The order indicated Jesse was expelled from school for the balance of the 1995-96 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.* 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.

The appeal letter in this case raises no specific issues for consideration. Although a briefing schedule was established, neither party filed a brief. In reviewing the record in this case I

find that the school district complied with all of the procedural requirements in this matter. I therefore affirm the expulsion decision.


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 Jesse B [REDACTED] by the Winter School District Board of Education is affirmed.

Dated this 25th day of March, 1996.



John T. Benson
State Superintendent of Public Instruction