

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  
BRENT W [REDACTED]  
by the D.C. Everest Area School District  
Board of Education

DECISION AND ORDER  
95/96-EX-25

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 10, 1996 order of the D.C. Everest Area School District Board of Education to expel Brent W [REDACTED], a 10th grade pupil, until August 1, 2000. This appeal, dated February 23, 1996, was filed by Brent's parents, and was received by the Department of Public Instruction on February 26, 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 21, 1995 from the Principal of the D.C. Everest Senior High School. The letter advised a hearing would be held on January 10, 1996 which could result in Brent's expulsion from school until his twenty-first birthday. The letter alleged Brent engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. Specifically the letter alleged conduct which endangered others at school, that is that Brent possessed drugs on December 19, 1995. The letter was sent separately to Brent and his parents by certified mail. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contains the minutes of the school board hearing, summaries of the administration's evidence and summaries of Brent's attendance and academic record.

The hearing was held on January 10, 1996. Brent and his father appeared at the hearing without counsel. At the hearing the school administration presented evidence on the ground for expulsion contained in the notice of expulsion hearing. Brent and his father were given the opportunity to cross examine witnesses, present testimony and respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Brent repeatedly refused or neglected to obey school rules and he 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 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 January 10, 1996, was mailed separately to Brent and his parents. The order indicated Brent was expelled from school until August 1, 2000..

## 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.*, 543 N.W. 2d 843 (1995). 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 presents no specific issues for consideration. In reviewing the record for this case I find the school board complied with all of the procedural requirements in this matter.

One issue, however, requires comment. The school board, in its finding of fact and conclusions of law, concluded Brent repeatedly refused or neglected to obey school rules. The notice of expulsion hearing did not advise the pupil or his parents that the school administration would rely on this ground for expulsion. The minutes of the school board meeting contained no reference to proof on this ground. The only reference to this alternative ground for expulsion was contained in a document attached to the notice of expulsion hearing sent to the parent. This document is entitled "Out of School Suspension Notice" and indicates tobacco possession on December 19, 1995. Brent was found in possession of regular tobacco as well as marijuana and blotter acid on December 19, 1995. He was not charged with possession of regular tobacco. The possession of marijuana and blotter acid as dangerous conduct formed the basis for expulsion specifically outlined in the notice of expulsion hearing.

If a school administration seeks an expulsion based on a specific statutory ground, that ground must be included in the notice of expulsion hearing and there must be evidence in the record to support it. That was not the case here regarding the rule violation of possession of regular tobacco. I leave for another day the issue of whether two separate rule violations arising from the same event may be the basis for an expulsion grounded on alleged repeated refusal or neglect to obey school rules. However, in this case the school board did give advance hearing notice and did make a finding that Brent engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. This finding is supported by the evidence and the expulsion must be affirmed.

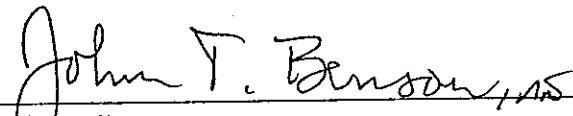
CONCLUSIONS OF LAW

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 Brent W [redacted] by the D.C. Everest Area School District Board of Education is affirmed.

Dated this 25<sup>th</sup> day of April, 1996.

  
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John T. Benson  
State Superintendent of Public Instruction