

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

THOMAS P [REDACTED]

by the Necedah Area School District
Board of Education

DECISION AND ORDER
95/96-EX-27

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 February 8, 1996 order of the Necedah Area School District Board of Education to expel Thomas P [REDACTED] from the Necedah Area School District for the remainder of the 1995-96 school year. This appeal was filed by Thomas's parents and was received by the Department of Public Instruction on March 25, 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 "Expulsion Hearing" dated January 31, 1996 from the high school principal of the Necedah Area School District. The letter advised that a hearing would be held on February 8, 1996 which could result in the pupil's expulsion from the Necedah Area School District. The letter was sent separately to Thomas and his parents by regular and certified mail. The letter alleged that Thomas engaged in conduct while on school grounds that violated school rules and that could endanger his safety or the well-being of other students. The letter specifically alleged Thomas admitted he was in possession of and/or admitted consumption of alcohol on school grounds on January 23, 1996. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on February 8, 1996. Thomas and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Thomas and his parents were given the opportunity to present evidence, to cross examine witnesses and to respond to the allegations. A portion of the student handbook relating to the school rules prohibiting alcohol on school grounds was presented at the hearing. Additionally, there was evidence presented that Thomas received a copy of that handbook on the first day of school.

After the hearing, the school board deliberated in closed session. The board found Thomas did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and that Thomas also violated school rules. 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 February 8, 1996, was mailed separately to Thomas and his parents. The order stated Thomas was expelled for the remainder 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.*, 199 Wis. 2d 1, 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 raises one issue which requires consideration.

Thomas argues that there was insufficient evidence for the board to conclude that he knowingly possessed and consumed an alcoholic beverage. Thomas argues that he did not know and was not told what the beverage he was offered contained when he took a sip out of a straw and further, that after he took the sip he spit out the alcohol.

The school board questioned Thomas about the incident and specifically asked questions relating to his knowledge of the contents of the beverage he sipped. Additionally, there was evidence that Thomas admitted to a police officer in the presence of a district administrator that he took a drink from a container of alcohol and ingested the alcohol to some degree before spitting it out.

This argument challenges the sufficiency of the evidence. It has been repeatedly held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 233 (June 29, 1994); and *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 183 (April 7, 1992). Furthermore, the credibility of the witnesses is judged by the school board. It is the province of the board to evaluate the evidence and determine whom they believe, including, for example, a determination of whether or not Thomas knew the beverage contained alcohol. *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985) citing *State ex Rel. DeLuca v. Common Council 72 Wis. 672, 695, 224 N.W. 2d 689 (1976)*.

One final issue is worthy of discussion, although it was not raised by either party. I note the district expelled Thomas based on conduct that endangered the property, health and safety of others at school and also based on the alternative ground that he violated school rules. Because the record fails to recite the necessary finding that Thomas *repeatedly* violated school rules, I find it was error to base Thomas' expulsion on rule violations. I do not find this omission to constitute reversible error, however, since the ground based on possessing and consuming alcohol as endangering the health and safety of others was adequately proven.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

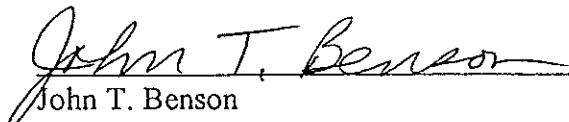
CONCLUSIONS OF LAW

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 Thomas P [REDACTED] by the Necedah Area School District Board of Education is affirmed.

Dated this 23rd day of May, 1996.



John T. Benson
State Superintendent of Public Instruction