

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of BRENT S [REDACTED] by the Mondovi School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-28</p>
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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 March 15, 1996 order of the Mondovi School District Board of Education to expel Brent S [REDACTED], a seventh grade student, from the school for the balance of the 1995-96 school year. This appeal, dated March 22, 1996 was filed by Brent's attorney, David J. Rice, 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 Notice of Pupil Expulsion Hearing dated March 6, 1996 signed by the Superintendent of the Mondovi School District. The notice indicated a hearing would be held on March 13, 1996 which could result in Brent's expulsion from the school. The notice 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 notice alleged Brent was found in possession of a butterfly knife while at school. This notice was sent separately to Brent and his parents by certified mail. A copy of the school board policy on "dangerous items" was attached to the notice. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The record also contains the minutes of the pupil expulsion hearing, a transcript of the hearing, and an audio tape of the hearing. Brent's attendance and academic record are also part of the record.

The hearing was held on March 13, 1996. Brent and his parents appeared at the hearing without counsel. The school administration presented evidence on the ground for expulsion alleged in the Notice of Hearing. Brent and his parents were given an opportunity to cross-examine the witnesses, present testimony and respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found 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. The school board further found the interests of the school demand the pupil's expulsion. The order of expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated March 15, 1996, was mailed separately

to Brent and his parents. The order indicated Brent was expelled through the end 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.

Both parties have submitted briefs in this case. Brent raises three issues that require consideration.

First, Brent, alleges he and his parents were not properly notified of the conduct supporting the ground for expulsion alleged in the notice of expulsion hearing. At the hearing, the administration offered into the record a notice of expulsion hearing. The offered notice was different from the notice of expulsion hearing actually sent to Brent and his parents. The notice actually sent to Brent and his parents had a different description of the particulars of the alleged conduct that gave rise to the ground for expulsion. When this discrepancy was discovered, the administration relied only on the notice of expulsion hearing actually sent to Brent and his parents. The other notice was not put into evidence or considered by the school board. I do not find any error on this issue. Brent and his parents had timely notice of the hearing. The notice of expulsion hearing was complete. The administration proceeded with proof on the issues raised in the notice of expulsion hearing actually sent to Brent and his parents.

Secondly, Brent makes several arguments concerning the sufficiency of the evidence in this case. He argues the "item" he brought to school was a letter opener. Brent's father testified at the hearing this letter opener has a hook on it which must be unclipped for the blade to be exposed. Brent argues this object is not a dangerous weapon under sec. 939.22(10), Wis. Stats. Further, Brent argues there is no evidence he used the object in a dangerous manner or intended to use it in a dangerous manner. Further, he argues the hearsay evidence used at the expulsion hearing was unreliable.

At the hearing, the school principal testified he received a note from a classroom teacher indicating some students had told the classroom teacher that Brent had a knife and intended to

harm another student. The principal and other school personnel searched Brent's locker. No knife was found. They then questioned Brent. Brent produced the object described by the school as a butterfly knife.

As the school district correctly points out, arguments as to the sufficiency of credible evidence to support the school board's findings have been held to be beyond the scope of the State Superintendent's review. *Brad A.M. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 19, 1994). The State Superintendent has consistently held that the school board's findings will be upheld if any reasonable view of the evidence sustains them. *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985).

Further, I have previously held it is within the discretion of the school board to conclude whether a student's conduct in bringing a knife to school endangered the health or safety of pupils. *Jesse M.K. v. Tri-County Area School District Board of Education*, Decision and Order No. 266 (January 2, 1996). The school board is in the best position to evaluate the evidence and the credibility of the witnesses. Prior decisions of the State Superintendent have indicated hearsay evidence is admissible and I have upheld expulsions based on the hearsay testimony of school officials. *Carlos M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 242 (December 21, 1994).

Thirdly, Brent argues he was not given the opportunity to present his own evidence in that the attorney for the school administration prevented him from doing so. Brent argues because he was permitted to present his defense at the "recommendation" stage of the hearing he was not permitted to challenge the factual allegations made by the school administration. There is no

question that Brent had the "item" on his person at school. Brent's father did, in fact, testify about what the "item" was during the "fact finding" portion of the hearing. He also cross-examined the school's witnesses on the same subject during that part of the proceeding.

I have reviewed the record in this case and find no procedural violations. Brent was given the opportunity to make a statement and he did so. Brent's father and a friend of Brent's also gave arguments and evidence respectively. I do not find that Brent or his parents were misled or prevented from participating in the hearing. The school board had all the evidence before they deliberated.

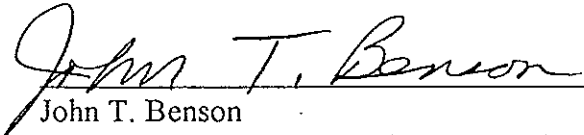
CONCLUSIONS OF LAW

Based upon my review of the evidence 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 S [REDACTED] by the Mondovi School District Board of Education is affirmed.

Dated this 23rd day of May, 1996.



John T. Benson
State Superintendent of Public Instruction