

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of JASON M [REDACTED] by the West Allis-West Milwaukee School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-32</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 April 2, 1996 order of the West Allis-West Milwaukee School District Board of Education to expel Jason M [REDACTED], a ninth grade pupil, from the school district through the end of the 1996-97 school year. This appeal, dated April 23, 1996, was filed by Jason's father and was received by the Department of Public Instruction on April 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 dated February 29, 1996 from the principal of Nathan Hale High School. The letter advised that a hearing would be held on March 14, 1996 which could result in Jason's expulsion from school. The letter was sent separately to Jason and his father by certified mail. The letter alleged Jason engaged in conduct which endangered the property, health and safety of Jason and others, and, further, that Jason refused or neglected to obey school rules. The letter specifically alleged Jason possessed marijuana with intent to deliver on school property and that he possessed a pocket knife while on school property. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The record also contains a letter dated March 15, 1996 from the school district administration to Jason and his father. This letter indicated the school board wished to reconsider some information before making a decision on the issue of expulsion. The record further contains a letter to Jason and his father dated March 21, 1996 from the president of the West Allis-West Milwaukee Board of Education indicating that the expulsion hearing would be reconvened on March 28, 1996 for the purpose of reconsidering information that Jason had provided at the hearing on March 14, 1996. The record also contains the minutes of the hearings held on March 14 and March 28, 1996. The record also includes the investigative reports from the West Allis Police Department, a statement signed by various faculty members of the high school, Jason's disciplinary record from November 27, 1995 through February 9, 1996 and a copy of the parent/student handbook. Further, the record contains a letter from the principal of the Arlington, Ohio high school and a copy of disciplinary information from the school district in Arlington, Ohio.

The expulsion hearing was originally held on March 14, 1996. Jason and his father appeared at the hearing without counsel. At the hearing the school administration presented evidence on the grounds for expulsion alleged in the notice. Jason and his father were given the opportunity to present witnesses, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. According to the minutes of the March 14, 1996 hearing the school board found that Jason, while at school, endangered the health and safety of others and that the interest of the school demands his expulsion. The board concluded that Jason should be expelled for the balance of the 1995-96 school year and the entire 1996-97 school year. The board further concluded that Jason could reapply for admission to the school at the start of the 1996-97 school year provided that he meet certain conditions.

Following the hearing on March 14, 1996, the school district sent a letter to Jason and his father indicating that they wished to reconsider certain information Jason had provided during the originally expulsion hearing before rendering a decision. The board then decided to reconvene the expulsion hearing to reconsider this information and scheduled this hearing for March 28, 1996. Jason and his father were given written notice of the March 28, 1996 hearing.

At the hearing on March 28, 1996 Jason and his father appeared without counsel. At that time the school district considered Jason's prior statements that he only attended school in the West Allis Schools. The school administration provided evidence that Jason had enrolled at a high school in Finley, Ohio and had several disciplinary problems while in attendance at that school. The board received a letter from the Ohio high school and various documents concerning his disciplinary referrals while he was in attendance there. One of the disciplinary referrals and

subsequent suspension from the Ohio high school concerned smoking marijuana on school grounds. At the conclusion of the hearing on March 28, 1996 the board found that Jason engaged in conduct while at school and while under the supervision of a school authority which endangered the property, health and safety of others. Specifically, the board found that Jason possessed marijuana on school grounds on February 12, 1996 with the intent to sell it to other students. The board further concluded that the interest of the school demands the pupil's expulsion. The order of expulsion containing the Findings of Fact and Conclusions of the school board was dated April 2, 1996. It was mailed separately to Jason and his father. The order stated Jason was expelled for the remainder of the 1995-96 school year and the entire 1996-97 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 no specific legal issues for review. Jason argues only that his expulsion was unjust. I have reviewed the record in this case and find no procedural deficiencies. Jason was accused of endangering the property, health or safety of others at school by possessing a controlled substance with intent to deliver. The school board found Jason did possess three bags of marijuana on school property. The ground for expulsion was clearly proven.

The balance of the original expulsion hearing and the reconvened expulsion hearing dealt with the issue of the appropriate discipline. The school board had all the evidence before it when it made its decision. I have previously held, as have my predecessors, that the superintendent will not review the severity of discipline imposed absent unusual circumstances. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with sec. 120.13(1)(c), Wis. Stats. *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11,

1995). The board followed the procedural requirements of sec. 120.13(1)(c), Wis. Stats. The expulsion order must be affirmed.

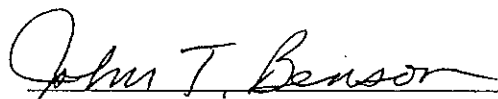
### CONCLUSIONS OF LAW

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 Jason M [REDACTED] by the West Allis-West Milwaukee School District Board of Education is affirmed.

Dated this 24th day of June, 1996.



John T. Benson  
State Superintendent of Public Instruction