

## THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

NATHAN W [REDACTED]

by the Wilmot Union High School District  
Board of Education

DECISION AND ORDER  
95/96-EX- 34

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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 27, 1996 decision of the Wilmot Union High School District Board of Education to expel Nathan W [REDACTED] from the Wilmot Union High School District until the second semester of the 1996-97 school year. Appeal letters were filed by the pupil and by the pupil's mother, which were received by the Department of Public Instruction on May 11, 1996 and May 14, 1996, respectively.

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 from the district's school principal dated March 20, 1996. The letter advised that a hearing would be held on March 27, 1996 which could result in the pupil's expulsion from the Wilmot Union High School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules, including multiple instances of "disruptive behavior," "failure to serve assigned detention," "inappropriate language," "left class without permission," and "insubordination." The letter also alleged one final incident of being "under the influence of marijuana." A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The pupil's letter of appeal specifically denies that he was under the influence of marijuana and states that this allegation was not confirmed.

The record also contains an undated document entitled "Findings" which was signed by the School Board Clerk, the District Administrator and the School Principal. The findings refer to a hearing held on March 27, 1996 and indicate that the board found the pupil engaged in "repeated refusal or neglect to obey school rules" and found that the interests of the school demand his expulsion until the second semester of the 1996-97 school year. The findings, as well as a current copy of sec. 120.13 (1)(c), Wis. Stats., were sent separately to the pupil and his parents by certified mail.

The record next contains an attendance summary and grade summary on the pupil. Finally, the record contains a form document entitled "Wilmot Union High School Student-School Board Hearing Procedure." The form is dated March 27, 1996 and includes the pupil name, age, date of birth and grade in school. The form indicates that the "reason for hearing" was "repeated

refusal or neglect to obey school rules.” The form also indicates that “it was determined that the alleged acts did occur.”

The hearing was not recorded. The record does not contain minutes indicating who was present at the hearing or what evidence was presented to the board. By letter dated June 25, 1996, the Department requested the district to submit any materials which may have been omitted from the record, specifically any material which would reflect oral or written information submitted to the board in support of the allegations of misconduct.

On the afternoon of July 9, 1996, the day before this decision’s due date, the district submitted an affidavit of the board president regarding the expulsion hearing. The affidavit indicates the board members and administrators present at the expulsion hearing and states that the pupil and his mother were also present. The affidavit further states that “the district’s case was presented by [the high school principal]. [He] presented the discipline referrals regarding [the pupil] during the 1995/96 school year. [He] called [the assistant principal] to verify a number of the discipline referrals that he processed during the school year.” Finally, the affidavit states that the pupil and his mother were given an opportunity to question the administrators and refute the allegations.

## 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.

Section 120.13(1)(c) Wis. Stats. requires a board to keep minutes of an expulsion hearing. At a minimum, minutes must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct and what decisions or actions a board took based upon the evidence presented. If there is a reasonable view of the evidence submitted which supports the board's findings, those findings will be upheld. *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Kristen J. P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185 (Feb. 21, 1992); *Rhiannon V. v. Muskego-Norway School District Board of Education*, Decision and Order

No. 188 (April 21, 1992). This record, however, contains no indication of the evidence or information presented to support the allegations of misconduct. The affidavit submitted by the board president indicates only that the administrator "presented the discipline referrals." This statement fails to give even minimal description of the nature of the information or evidence upon which those discipline referrals were based. This statement adds no more information than would a statement to the effect that the administrator "presented the allegations." What is lacking is some indication as to the evidence supporting the allegations. It is therefore impossible to determine on this record whether any evidence was submitted supporting the findings necessary to permit expulsion. This omission requires reversal. *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994).

I do note that this may be a case in which the board could convene and correct its error by duly supplementing the minutes of the expulsion hearing, if possible at this point, to accurately reflect the nature of the evidence presented upon which their findings were based. See, e.g., *Nicole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992).

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I therefore reverse this expulsion.

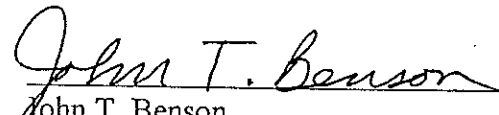
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nathan W [REDACTED] by the Wilmot Union High School District Board of Education is reversed.

Dated this 10th day of July, 1996.

  
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John T. Benson  
State Superintendent of Public Instruction