

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JOSHUA J [REDACTED]</p> <p>by the Menasha Joint School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-35</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 May 3, 1996 order of the Menasha Joint School District Board of Education to expel Joshua J [REDACTED], a 16 year old pupil, from school for the balance of the 1995-96 school year and the entire 1996-97 school year. This appeal, dated May 14, 1996, was filed by Joshua's mother and was received by the Department of Public Instruction on May 16, 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 April 23, 1996 from the Superintendent of Schools for the Menasha Joint School District. The letter advised a hearing would be held on April 30, 1996 which could result in Joshua's expulsion from school. The letter was sent separately to Joshua and his parents. The letter alleged Joshua engaged in a repeated refusal or neglect to obey school rules, and that while at school or under the supervision of a school authority, he endangered the property, health or safety of others at school, including employees and school board members.

The letter specifically alleged Joshua possessed drug paraphernalia at school and had previously been disciplined for insubordination, disruptive behavior and truancy. A current copy of sec. 120.13(1)(c), Wis. Stats., was attached to the notice. The record also contains the minutes of the school board meeting at which the expulsion hearing was held and a copy of the school board policy on possession of electronic communication devices and drug paraphernalia. Joshua's academic and disciplinary record and an audio tape of the expulsion hearing are also included in the record.

The expulsion hearing was held on April 30, 1996. Joshua and his parents appeared at the hearing without counsel. At the hearing the school administration presented evidence on the grounds for expulsion alleged in the notice. Joshua and his parents 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. The school board found that the grounds for expulsion alleged in the notice were proven. The 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 the board, was dated May 3, 1996. The order was mailed

separately to Joshua and his parents. The order stated Joshua 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 argues this expulsion order was too harsh, considering the prior disciplinary record of the pupil. Joshua further argues there are alternatives to expulsion which could have been explored.

The State Superintendent has repeatedly held that harshness and severity of discipline are matters that lie within the discretion of the school board. Absent unusual circumstances, this issue has not been reviewed by the State Superintendent. The local school board is in the best position to evaluate the evidence and to make the decision on appropriate discipline. *Jesse P. v. Hustisford School District Board of Education*, Decision and Order No. 293 (June 10, 1996); *Travis M. v. Tri-County Area School District Board of Education*, Decision and Order No. 241 (December 8, 1994). In this case, Joshua admitted the possession of drug paraphernalia on school premises. The school board policy clearly indicated that expulsion was a possible form of discipline for this conduct. The school board properly exercised its discretion in this matter.

Joshua also argues there are alternatives to expulsion, such as community service, that would be more beneficial to him. The school board had before it the argument Joshua raises here. The board chose not to use that alternative. This decision is within the discretion of the board and I cannot reverse an expulsion order on that basis.

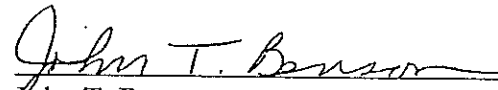
### CONCLUSIONS OF LAW

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 Joshua J. [REDACTED] by the Menasha Joint School District Board of Education is affirmed.

Dated this 8th day of July, 1996.



John T. Benson  
State Superintendent of Public Instruction