

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MICHAEL H [REDACTED]
by the Janesville School District
Board of Education

DECISION AND ORDER
95/96-EX-36

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 June 4, 1996 order of the Janesville School District Board of Education to permanently expel Michael H [REDACTED], a ninth grade pupil, from the school district. This appeal, dated May 28, 1996, was filed by Michael's parents and was received by the Department of Public Instruction on May 30, 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 May 1, 1996 from the district administrator of the Janesville School District. The letter advised a hearing would be held on May 20, 1996 which could result in Michael's expulsion from school. The letter was sent separately to Michael and his parents by certified and regular mail. The letter alleged Michael possessed marijuana and drug paraphernalia in violation of school board policies. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. Copies of the applicable school board policies were attached to the letter. The record also contains the written recommendation for expulsion from the school administration, an incident report detailing the alleged conduct and copies of police investigative reports. A copy of Michael's academic and disciplinary record and the minutes of the school board expulsion hearing are also in the record.

The expulsion hearing was held on May 20, 1996. Michael and his parents appeared at the hearing and were represented by counsel, Attorney Michael O'Brien. At the hearing the school administration presented evidence on the grounds for expulsion alleged in the notice. Michael, his parents and their attorney were given an 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 board found Michael engaged in conduct while at school which endangered the property, health or safety of others. The board specifically found Michael possessed marijuana and a marijuana pipe on school property. The board further found the best interest of the school demands the pupil's expulsion. The order of expulsion containing the Findings of Fact was dated June 4, 1996. It was mailed separately to Michael and his parents. The order stated Michael would be permanently expelled

from the school district. The board further ordered that Michael could apply for readmission in the fall of 1996 if he completes summer school, complies with assessment recommendation and received individual and family AODA counseling.

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 (Lemy 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.

Michael raises two issues that require consideration. First, Michael argues that the lack of a written policy concerning grades for an expelled student has caused a significant disruption in his academic progress. Michael argues that he was given different explanations of the grading for an expelled student. Finally, he argues he was told it was no longer an issue because he was no longer considered a student at the high school. In reviewing an appeal in an expulsion decision, I am bound by the record before me. The minutes of the school board hearing do not indicate any discussion of the grading issue. There is no transcript or audio tape of this expulsion hearing. From the record before me, I cannot determine factually what, if anything, was said concerning Michael's grades. Further, the superintendent's review is limited to a review of the procedural regularity surrounding the hearing and compliance with sec. 120.13(1)(c), Wis. Stats. I am unable to review this issue in the context of an expulsion appeal.

Secondly, Michael argues he was treated unfairly by the school board because the range of discipline available for this offense was too broad and his best interests were not considered. The school board policy applicable to Michael's conduct does indicate a number of possible consequences for possession of marijuana and drug paraphernalia on school property. These consequences range from suspension to a possible expulsion. The school board had before it all the facts Michael argues they failed to consider. His complete academic and disciplinary record were in evidence as well as documents offered by Michael himself. The harshness or severity of discipline are issues within the sound discretion of the school board. Absent unusual circumstances, the superintendent will not review these issues. *Jason M. v. West Allis-West*

Milwaukee School District Board of Education, Decision and Order No. 294 (June 24, 1996). I note in this case the school administration recommended to the school board that Michael be expelled with the opportunity to apply for enrollment after the first semester of the 1996-97 school year. The school board decided to permit Michael to seek readmission in the fall of the 1996-97 school if he completes certain conditions. I believe the school board was responding to Michael's educational needs in a positive way by giving him this opportunity. I commend the board for this action and hope that Michael will take full advantage of this opportunity.

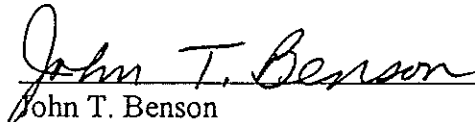
CONCLUSIONS OF LAW

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 Michael H [REDACTED] by the Janesville School District Board of Education is affirmed.

Dated this 23rd day of July, 1996.



John T. Benson
State Superintendent of Public Instruction