

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>DECISION AND ORDER 95/96-EX-38</p>	<p>In the Matter of the Expulsion of ADAM S. [REDACTED] by the East Troy Community School District Board of Education</p>
---	---

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 13, 1996 order of the East Troy Community School

District Board of Education to expel Adam S. [REDACTED], an 11th grade pupil, from school for the

remainder of the 1995-96 school year. This appeal, dated June 10, 1996, was filed by Adam's

attorney, Steven J. Watson, and was received by the Department of Public Instruction on June 11,

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.

The record contains a letter entitled "Notice of Expulsion Hearing" dated April 2, 1996 from the superintendent of the East Troy Community School District. The notice advised a hearing would be held on April 15, 1996 which could result in Adam's expulsion from school until his 21st birthday. The notice was sent separately to Adam and his parents. The notice alleged Adam possessed alcohol and gave alcohol to another student while on a school related activity. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the notice. The record also contains two other notices of pupil expulsion hearings dated April 19 and April 29, 1996 rescheduling the expulsion hearing to April 22 and May 13, 1996 respectively.

The record also contains the minutes of the school board expulsion hearing held on May 13, 1996, Adam's disciplinary record and reports concerning Adam's alleged conduct. A copy of the applicable school board policy and other documents introduced as exhibits at the hearing are also part of the record.

The expulsion hearing was held on May 13, 1996. Adam and his parents appeared at the hearing and were represented by counsel, Attorney Steven J. Watson. At the hearing the school administration presented evidence concerning the grounds for expulsion alleged in the notice. Adam, his parents and their attorney 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 board found Adam endangered the health, safety and welfare of himself and others by possessing and alcohol and giving the alcohol to another student during the school band trip to Washington, D.C. The order of expulsion was dated May 13, 1996. It was mailed to Adam. The order stated Adam was

FINDINGS OF FACT

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

DISCUSSION

expelled for the remainder of the 1995-96 school year but he could enroll in summer school. The board also denied Adam the right to go on other school field trips for the remainder of his high school career.

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 sides have submitted briefs in this case. Adam raises several issues in this appeal.

He argues that he was suspended for this conduct on April 1, 1996 but the expulsion hearing was not held until May 13, 1996 and, therefore, his rights were violated. Further, he argues the board failed to make a specific finding that he "endangered the property, health or safety of others," that he "was under the supervision of a school authority" when the conduct occurred, and, finally, the board failed to make a specific finding that the interests of the school demand his expulsion.

Further, Adam argues no reasonable view of the evidence could sustain any of the findings

referred to above. Adam finally argues the notice to his parents was defective in that Adam's

father's first name was incorrectly stated.

Because the board failed to comply with the statutory requirements I am compelled to

reverse this expulsion decision. The record in this case fails to reflect the finding by the board that the interests of the school demand the pupil's expulsion. Neither the minutes nor the order

indicate this finding was made by the board. This omission requires reversal. *Paul R. v. East*

Troy Community School District Board of Education, Decision and Order No. 254 (June 21,

1995); *Mark P. v. Marinette School District Board of Education*, Decision and Order No. 236

(August 26, 1994).

Further, the record in this case does not indicate a separate copy of the expulsion order

was mailed to Adam's parents as required by sec. 120.13(1)(c), Wis. Stats. The record indicates

the order was sent to Adam because that fact is recited in the order. There is no other indication

the order was mailed to Adam's parents. The statutory notice requirement in sec. 120.13(1)(c),

Wis. Stats., is held to be mandatory. The failure to send a copy of the expulsion order to the child and separately to the parents is reversible error. *Robert J.K. v. Manitowoc School District Board*

of Education, Decision and Order No. 230 (May 3, 1994).

It may be possible for the board without completely rehearing this case to correct its

omissions. See decisions in *Nicole P. v. Crandon School District Board of Education*, Decision

and Order No. 184 (February 7, 1992) and *Nicole P. v. Crandon School District Board of*

Education, Decision and Order No. 193 (May 29, 1992).

I am most reluctant to reverse this expulsion decision. However, compliance with the

statutory procedure is essential. This decision does not in any way condone Adam's conduct in

this case. I believe the school district was very fair in its review of this case and I applaud them

for offering Adam the opportunity to enroll during summer school to permit him to continued

academic progress.

Adam raises several other issues in this appeal. Because I am reversing this decision on

the basis of the failure to comply with the statute, it is not necessary to consider these other

issues.

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 failed to comply with all of the procedural requirements of

sec. 120.13(1)(c), Wis. Stats.

IT IS THEREFORE ORDERED that the expulsion of Adam S [REDACTED] by the East Troy Community School District Board of Education is reversed.

Dated this _____ 9th day of August _____, 1996.

John T. Benson
John T. Benson
State Superintendent of Public Instruction