

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of  
Dustin P. [REDACTED]  
  
by the Deerfield Community School District  
Board of Education

DECISION AND ORDER  
95/96-EX-40

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 20, 1996 order of the Deerfield Community School District Board of Education to permanently expel Dustin P. [REDACTED] from the Deerfield Community School District. This appeal, dated August 11, 1996, was filed by Dustin's parents and was received by the Department of Public Instruction on August 14, 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 29, 1996 from the District Administrator of the Deerfield Community School District. The letter advised that a hearing would be held on June 6, 1996 concerning the expulsion of Dustin from the Deerfield Community School District. The letter was sent separately to Dustin and his parents by regular and certified mail. The letter alleged that Dustin engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and also that Dustin repeatedly refused or neglected to obey school rules. The letter specifically alleged that on May 22, 1996 Dustin refused to stop using sexually explicit language when told to do so by his teacher and then threatened the lives of his teacher and his teacher's aide. The letter further alleged that this type of threat had been made before by Dustin to his teachers, teacher's aide, fellow students and principal. A current copy of sec. 120.13(1)(c), Stats., accompanied the letter. The record contains numerous documents provided by the district at the expulsion hearing. A transcript of the school board expulsion hearing is also part of the record. The hearing was rescheduled to June 20, 1996 at the request of Dustin's parents at which time the hearing was held in closed session. Dustin and his parents appeared at the hearing. They were not represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Dustin and his parents were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. The school board policies concerning student rights and responsibilities were also admitted into the record.

After the hearing, the school board deliberated in closed session. The board found Dustin did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and also that Dustin repeatedly refused or neglected to obey school rules. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the school board, dated June 20, 1996, was mailed separately to Dustin and his parents. The order stated Dustin was permanently expelled.

### 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 two issues for consideration. First, Dustin asserts that he was not treated fairly at the expulsion hearing and that the board already made its mind up before the hearing.

I note that Dustin does not allege any specific procedural or substantive violations of fairness. In reviewing the record, I find that all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats. were complied with by the district at the hearing.

Dustin also challenges the length of the expulsion as too extreme. However, the State Superintendent has repeatedly held that the length of an expulsion is within the discretion of the board so long as the board complies with all the procedural requirements of sec. 120.13(1)(c), Wis. Stats. See *Amanda L. v. Hartford Union High School District Board of Education*, Decision and Order No. 257 (August 3, 1995); *Brandon H v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); and *Lavell A. v. Kenosha Unified School District Board of Education*, Decision and Order No. 147 (January 12, 1987).

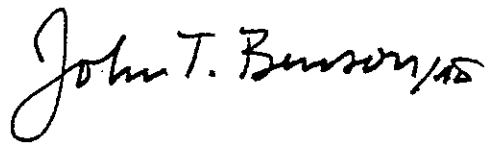
## CONCLUSIONS OF LAW

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 Dustin P. [REDACTED] by the Deerfield Community School District Board of Education is affirmed.

Dated this 11th day of October, 1996.



John T. Benson  
State Superintendent of Public Instruction