

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
TROY Y [REDACTED]
by the Burlington Area School District
Board of Education

DECISION AND ORDER
96/97-EX-08

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 December 2, 1996 order of the Burlington Area School District Board of Education to expel Troy Y [REDACTED] (the pupil) from the Burlington Area School District until January 6, 1997. The pupil is in 12th grade. This appeal, dated December 11, 1996, was filed by the pupil's parent, Ralph E. Yopp, and was received by the Department of Public Instruction on December 13, 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 November 13, 1996 from the Assistant Superintendent of the Burlington Area School District. The letter advised that a hearing would be held on November 25, 1996 which could result in the pupil's expulsion from the Burlington Area School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while on school grounds that violated school rules and which endangered the property, health or safety of others. The letter specifically alleged that the pupil consumed alcoholic beverages in the school radio station between 6:00 p.m and 9:00 p.m. on November 9, 1996. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. The record also contain a November 25, 1996 letter from a psychotherapist regarding an AODA assessment of the pupil, a one page summary of the school investigation of the matter and the pupil's grade and attendance records. Minutes and agenda of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on November 25, 1996. The pupil and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations. The pupil does not dispute that he drank beer in the school radio station on the date alleged.

After the hearing, the school board deliberated in closed session. The board found that the pupil 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 that the student also violated 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 December 2, 1996, stated the pupil was expelled until January 6, 1997. The board further ordered that the pupil would not be allowed to participate in any co-curricular activities for the remainder of the school year, and that the pupil would continue the counseling program recommended through the agency that conducted the AODA assessment.

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 challenges the pupil's expulsion and his exclusion from co-curricular activities during the spring 96-97 school period as unjust punishment for a first-time offender. The appeal also points out that the pupil drank two beers at the radio station, not a 12-pack as suggested in the district's summary of its investigation.

I have previously held, as have my predecessors, that the State Superintendent will not review the severity of discipline imposed absent unusual circumstances. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at 120.13(1)(c), Wis. Stats. *Tony R v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995); *Jason M v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Nicholas E. v. the Lodi School District Board of Education*, Decision and Order No. 303 (October 17, 1996). The board was well within its authority to impose the brief period of expulsion it chose in this case. Further, the board is authorized to combine a brief period of expulsion with other lesser discipline, such as exclusion from co-curricular activities for a specified period. This lesser form of discipline deprives the pupil of a privilege and is distinct from requiring the pupil to perform particular activities or otherwise placing conditions on his return to school. (Previous decisions of the State Superintendent have questioned the validity of certain conditions imposed by school districts for the early readmission of an expelled pupil. See

e.g. *Brandon C. by Florence County School District Board of Education*, Decision and Order No. 251 (June 12, 1995); *Lori L. by Baraboo School District Board of Education*, Decision and Order No. 227 (April 22, 1994). The board has questionable authority to enforce the portion of its order requiring continued counseling, as appropriate and desirable as counseling may be. *Michael J.B. v. the Palmyra-Eagle Area School District Board of Education*, Decision and Order No. 151 (July 27, 1987); *Lori P. v. the Cudahy School District Board of Education*, Decision and Order No. 169 (May 21, 1990). However, the parent does not challenge that provision of the board's order and I need not comment further on it in this appeal.

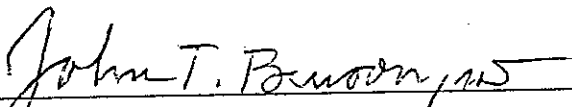
CONCLUSIONS OF LAW

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. I therefore am compelled to affirm this decision.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Troy Y [redacted] by the Burlington Area School District Board of Education is affirmed.

Dated this 21st day of January, 1997.



John T. Benson
State Superintendent of Public Instruction