

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
DANIELLE A. W [REDACTED]
by the Barron Area School District
Board of Education

DECISION AND ORDER
96/97-EX-05

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 November 22, 1996 order of the Barron Area School District Board of Education to expel Danielle W [REDACTED] from the Barron Area School District for the remainder of the 1996-97 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on December 2, 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 entitled "Notice of Expulsion Hearing" dated November 13, 1996 from the district administrator of the Barron Area School District. The letter advised that a hearing would be held on November 20, 1996 which could result in the pupil's expulsion from the Barron Area School District. The letter was sent separately to Danielle and her parents by regular and certified mail. The letter alleged that Danielle repeatedly refused or neglected to obey school rules. The letter specifically alleged that Danielle acquired in excess of 24 demerit points on the school discipline policy. A written summary of the rights pupils and parents possess in the expulsion hearing process was incorporated in the letter. Minutes 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 20, 1996. Danielle and her parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion and introduced numerous exhibits that documented Danielle's various incident referrals. Danielle and her parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found Danielle repeatedly refused or neglected to obey school rules between September 4, 1996 and November 7, 1996. 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 November 22, 1996, was mailed separately to Danielle and her parents. The order stated Danielle was expelled for the remainder of the 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.

Both parties filed briefs in this case. Danielle raises several issues for consideration. First, Danielle argues that she was basically expelled for her attendance. The record indicates that Danielle was expelled for repeatedly refusing or neglecting to obey school rules in acquiring in

excess of 24 demerit points on the school discipline policy. Included in the record are the disciplinary referrals that describe the behavior Danielle engaged in resulting in demerit points. Disciplinary referrals were made because Danielle failed to attend school or left school without permission. However, the record reveals Danielle also earned demerit points for inappropriate classroom behavior on one occasion and insubordination on a separate occasion.

It has previously been held that two violations of school rules constitutes repeated violation of school rules within the meaning of sec. 120.13(1)(c), Wis. Stats. See *William S. v. Suring School District Board of Education*, Decision and Order No. 98 (June 17, 1982), *Russell T. v. Tigerton School District Board of Education*, Decision and Order No. 99 (June 17, 1982) and *Robert M. v. Kiel School District Board of Education*, Decision and Order No. 149 (April 30, 1987).

Next Danielle argues she was not treated fairly since other students who earned demerit points were not expelled. However, the issue of the evenness and fairness of disciplinary measures imposed by schools is an issue the State Superintendent is without authority to address. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988) and *Douglas S v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989).

Danielle also alleges she was treated unfairly based on an incident that occurred with the high school principal sometime prior to the expulsion hearing. She alleges she attempted to discuss her problems with him but he rebuffed her stating "You do not fit my criteria". It appears Danielle raises this incident to demonstrate how the school administration was biased against her. However, the law presumes that school board members, as public officials, will

discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis.2d 187 (Ct. App. 1992), (petition for review denied), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis.2d 243, 266 (1961), appeal dismissed and cert. denied, 370 U.S. 720 (1962). In this case I find nothing in the record to support a finding of bias. The principal's statement, taken in context, made well before the expulsion hearing, does not reflect any bias or predisposition against Danielle.

Lastly, Danielle appears to argue that expulsion is too drastic based on her conduct. The State Superintendent has repeatedly held that harshness and severity of discipline are matters that lie within the discretion of the school board as long as all the procedural requirements of sec. 120.13(1)(c), Wis. Stats., are complied with. Absent unusual circumstances, this issue has not been reviewed by the State Superintendent. *Jesse P. v. Hustaford School District Board of Education*, Decision and Order No. 293 (June 10, 1996), *Travis M v. Tri County School District Board of Education*, Decision and Order No. 241 (December 8, 1994) and *Kristin J.P. v. Mukwonago School District Board of Education*, Decision and Order No. 185 (February 21, 1992).

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

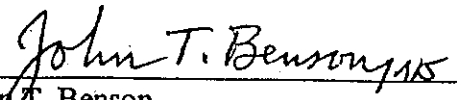
CONCLUSIONS OF LAW

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 Danielle A. W. by the Barron Area School District Board of Education is affirmed.

Dated this 31st day of January, 1997.



John T. Benson
State Superintendent of Public Instruction