

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of

BRAD ██████████

by the Burlington School District  
Board of Education

DECISION AND ORDER  
96/97-EX-09

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**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 School District Board of Education to expel Brad K█████████ from the Burlington School District until January 6, 1997. This appeal, dated December 18, 1996, was filed by the pupil's mother, and was received by the Department of Public Instruction on December 18, 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 School District. The letter advised that a hearing would be held on November 25, 1996 concerning the expulsion of Brad from the Burlington School District. The letter was sent separately to Brad and his mother by regular and certified mail. The letter alleged that Brad engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged that Brad consumed alcoholic beverages in the school radio station between 6:00 PM and 9:00 PM on November 9, 1996. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. The record also contain various documents including a November 25, 1996 letter from a psychotherapist regarding an AODA assessment of the pupil, several letters of recommendation on behalf of the pupil, and the pupil's grade and attendance records. 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 25, 1996. Brad and his mother appeared at the hearing. They were not represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Brad and his mother were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations. Brad does not dispute that he drank beer on November 9, 1996 in the school radio station.

After the hearing, the school board deliberated in closed session. The board found Brad 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 Brad 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, was mailed separately to Brad and his mother. The order stated Brad was expelled until January 6, 1997. The board further ordered that Brad was not allowed to participate in any co-curricular activities for the remainder of the school year and that Brad 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.

Brad's appeal letter argues that the discipline imposed was too severe especially in light of the discipline imposed by other school districts for similar conduct. Brad also challenges the severity of the board's order excluding him from co-curricular activities for the remainder of the school year.

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); *Troy Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997). 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.

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

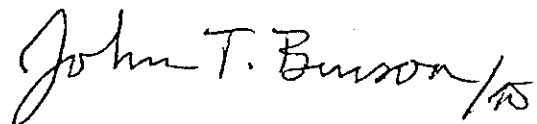
#### CONCLUSIONS OF LAW

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 Brad K. [REDACTED] by the Burlington School District Board of Education is affirmed.

Dated this 14<sup>th</sup> day of February, 1997.

A handwritten signature in cursive script that reads "John T. Benson" followed by a stylized flourish or initials.

John T. Benson  
State Superintendent of Public Instruction

## **APPEAL RIGHTS**

Section 120.13(1)(c), Wis. Stats., specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of sec. 227.53, Wis. Stats., is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

Parties to this appeal are:

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