

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

TAMMY D [REDACTED]

by the Greenfield School District
Board of Education

DECISION AND ORDER
96/97-EX-10

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 October 10, 1996 order of the Greenfield School District Board of Education to expel Tammy D [REDACTED] from the Greenfield School District until August 28, 1998. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on January 17, 1997.

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 October 2, 1996 from the assistant district administrator of the Greenfield School District. The letter advised that a hearing would be held on October 10, 1996 which could result in the pupil's expulsion from the Greenfield School District. The letter was sent separately to Tammy and her parents. The letter alleged that Tammy engaged in conduct while on school grounds that endangered the property, health or safety of others. The letter specifically alleged that on October 1, 1996, Tammy made threats of violence towards another student and used pepper spray on that student while on school property. A summary of the rights parents and pupils possess in the expulsion hearing process was incorporated in the notice. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are part of the record.

The hearing was held in closed session on October 10, 1996. Tammy and her parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Tammy 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 Tammy 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. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion containing the findings of the school board, dated October 10, 1996, was mailed separately to Tammy and her parents. The order stated Tammy was expelled until August 28, 1998.

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 fairness of the expulsion and requests a shorter period of expulsion. However, 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).

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

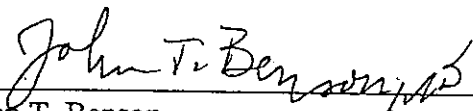
CONCLUSIONS OF LAW

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 Tammy [REDACTED] by the Greenfield School District Board of Education is affirmed.

Dated this 11th day of March, 1997.



John T. Benson
State Superintendent of Public Instruction