

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JASON J. K [REDACTED]</p> <p>by the Franklin School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-12</p>
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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 23, 1996 order of the Franklin School District Board of Education to expel the above named eleventh grade pupil from the Franklin 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 January 21, 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 27, 1996 from the district administrator of the Franklin School District. The letter advised that a hearing would be held on December 5, 1996 which could result in the pupil's expulsion from the Franklin School District. The letter was sent separately to the pupil and his parents. The letter alleged that the pupil engaged in conduct which endangered the property, safety, or health of others and also that the pupil repeatedly refused to follow school rules. The letter specifically alleged that on or around October 23, 1996, the pupil participated in the theft of school property (truck and car) from the school's auto shop parking area. The letter included the rights parents and pupil possess in the expulsion hearing process. A transcript of the hearing is part of the record, along with the exhibits introduced at the hearing consisting of the pupil's disciplinary, attendance and progress records.

The hearing was held in closed session on December 5, 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.

After the hearing, the school board deliberated in closed session. The board found the pupil engaged in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others and that the pupil also repeatedly 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 23, 1996, was mailed separately to the

pupil and his parents. The order stated the pupil was expelled for the remainder of the 1996-97 school year including the summer 1997 term.

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 pupil's parents raise several issues in this appeal. First, the parents question whether a letter written by a third party in support of their son was submitted at the expulsion hearing. I note that the parents appeared at the expulsion hearing and were given an opportunity to present evidence and cross-examine witnesses. My review of this expulsion is limited to the actual expulsion hearing record and, as the district correctly points out, generally matters not submitted to the board at the expulsion hearing will not be considered by the State Superintendent on appeal. *Omar c. v. Whitewater School District Board of Education*, Decision and Order No. 258 (August 11, 1995) and *Tony R. v. Lake Geneva Joint No 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

Next, the parents argue that while their son's conduct was not as aggravated as the conduct of the other pupil involved, both pupils received the same harsh penalty of expulsion. Additionally, the parents argue that since their son made restitution and sought counseling, as the district suggested, he should receive consideration and the expulsion should be reversed.

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 sec. 120.13(1)(c) Wis. Stats. *Brandon H.v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R v. Lake Geneva Joint No 1 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).

If the pupil's parents feel that a change in circumstances warrant further consideration by the school board, they may request the school board to consider the new factors of restitution and

counseling. However, it is up to the school board whether or not to give consideration to these factors and I am without authority to reverse the expulsion absent procedural defects.

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

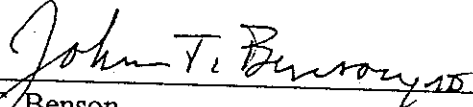
CONCLUSIONS OF LAW

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 Jason K [REDACTED] by the Franklin School District Board of Education is affirmed.

Dated this 21st day of March, 1997.



John T. Benson
State Superintendent of Public Instruction