

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of NILES T. S [REDACTED] by the Webster School District Board of Education	DECISION AND ORDER 96/97-EX-14
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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 17, 1996 order of the Webster School District Board of Education to expel the above named eleventh grade pupil from the Webster School District through the end 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 February 4, 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 November 22, 1996 from the assistant principal of the Webster School District. The letter advised that a hearing would be held on December 16, 1996 which could result in the pupil's expulsion from the Webster School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil repeatedly violated school rules and endangered the health and safety of students and staff at school. The letter specifically alleged that the pupil engaged in numerous repeated violations of school rules and violence, documented in the disciplinary referral forms and reports, numbered 1-30 and attached to the letter. A 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, are also part of the record.

The hearing was held in closed session on December 16, 1996. The pupil appeared at the hearing by his parents who appeared without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil's 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 repeatedly refused or neglected to obey school rules and engaged in conduct which endangered the health and safety of others. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion dated December 17, 1996, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the end of the 1997-98 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.

The pupil's parents challenge the length of the expulsion since it prevents educational growth for their son and imposes on them a huge financial burden.

However, I have repeatedly held that 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 of 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).

The parents allege that their son was expelled for infractions that "are minor or even frivolous in nature." Further, it is alleged by the parents that the expulsion is unfair given the discipline imposed by the district on other students.

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 *Williams 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).

With regard to the fairness and unevenness of disciplinary measures imposed by schools, I am without authority to address those issues. *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988); *Douglas S. v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989) and *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997).

The parents argue that the minutes of the expulsion hearing are not a true account of what occurred at the hearing. However, my review is limited to the actual expulsion hearing record.

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

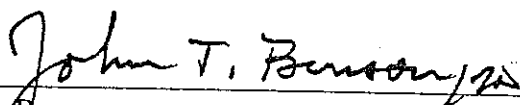
CONCLUSIONS OF LAW

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 Niles T. S [REDACTED] by the Webster School District Board of Education is affirmed.

Dated this 3rd day of April, 1997.



John T. Benson
State Superintendent of Public Instruction