

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of TIMOTHY R [REDACTED] by the DePere Unified School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-16</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 12, 1996 order of the DePere Unified School District Board of Education to expel the above named pupil from the DePere Unified School District for the remainder of the 1996-97 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on February 10, 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 "Notice of Pupil Expulsion Hearing" dated November 27, 1996 from the district administrator of the DePere Unified School District. The letter advised that a hearing would be held on December 9, 1996 which could result in the pupil's expulsion from the DePere Unified School District. The letter was sent separately to the pupil and his parent by certified mail and was received on November 29, 1996. The letter alleged that the pupil while on school grounds repeatedly refused or neglected to obey school rules. The letter specifically alleged that the pupil skipped classes, wandered the halls, smoked, refused to follow direct requests of school officials and verbally assaulted school personnel. A current copy of sec. 120.13(1)(c), Wis. Stats., was included with the Notice. Minutes of the school board expulsion hearing, an audio tape of the expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on December 9, 1996. The pupil and his parent appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent 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 that the pupil repeatedly refused or neglected to obey school rules. Specifically, the board found that the pupil used profanity and engaged in threatening and disruptive behavior on three occasions at school. The school board further found that the interests of the school demand the pupil's expulsion. The order for expulsion containing the Findings of Fact and Conclusions of Law of the

school board, dated December 12, 1996, was mailed separately to the pupil and his parent. The order stated the pupil 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.

The parent in this case argues that the board's decision to expel was unduly harsh. As the district properly notes in its brief, the decision whether to expel and the length of the expulsion period is within the authority and discretion of the board to determine. See e.g. *Ernesto G. v. Waukesha School District Board of Education* Decision and Order #269 (Jan 12, 96). The parent also objects to the quality of the record in this matter. Although the transcript is not a verbatim stenographic transcript, the record in this matter is certainly adequate to permit meaningful review of the board's actions. See e.g. *Nathan W. v. Wilmont Union High*, Decision and Order No. 296 (July 10, 1995). Finally the parent suggests that the pupil should have been evaluated for exceptional educational needs (EEN). The parent has been advised of her right to request such an evaluation even after expulsion and the district acknowledges that right. The scope of my authority in this appeal does not permit me to consider whether the pupil should have been evaluated at an earlier time. See e.g. *Mathew C. by the Lake Geneva - Genoa School District Board of Education*, Decision and Order No. 277 (Mar. 12, 1996).

Because the school district complied with all of the procedural requisites, I am required to affirm this expulsion. I encourage the pupil and his parent to continue to pursue any available educational options, including correspondence courses which according to the parent had been offered by the district. I also encourage the pupil to return to school and complete his high school studies after this term of expulsion.

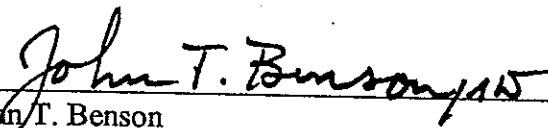
CONCLUSIONS OF LAW

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 Timothy R. [REDACTED] by the DePere Unified School District Board of Education is affirmed.

Dated this 8th day of April, 1997.



John T. Benson
State Superintendent of Public Instruction