

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JEFFREY L. [REDACTED]</p> <p>by the New Lisbon School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-17</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 February 10, 1997 order of the New Lisbon School District Board of Education to expel the above named tenth grade pupil from the New Lisbon School District until February 10, 1998. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on February 14, 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 February 4, 1997 from the high school principal of the New Lisbon School District. The letter advised that a hearing would be held on February 10, 1997 which could result in the pupil's expulsion from the New Lisbon 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 refused or neglected to obey school rules. The letter specifically alleged:

1. that the pupil failed to follow school rules, as set forth on page 8 of the Student Handbook, on the following dates by leaving school during the day:

September 18, 19, 20, 21 and December 4, 13, 19 and 20;

2. that the pupil failed to follow school rules, as set forth on page 6 of the Student Handbook, on the following dates by not following the procedure upon returning to school following an absence:

August 22,

September 3, 6, 12, 16, 18, 19, 25, 26, 27,

October 23, 28, 29, 30, 31,

November 1, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27

December 2, 3, 4, 13, 16, 17, 19, 20, 21, 29

January 9, 10, 20, 21, 29

3. that the pupil failed to attend detention on December 18 and failed to follow school rules regarding attendance on January 22. The rights pupils and parents possess in the expulsion hearing process was incorporated in the letter. An audio tape of the expulsion hearing, a transcript of the hearing and the minutes of the hearing are also part of the record.

The hearing was held in closed session on February 10, 1997. The pupil and his mother appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and his mother 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 did engage in repeated refusal or neglect to obey 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 February 10, 1997, was mailed separately to the pupil and his parents. The order stated the pupil was expelled for a period of 1 year and that the pupil was permitted to reapply for admission from and after the conclusion of the first semester of the 1997/1998 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 as well as the school district both filed briefs in this case. I note that the brief submitted by the parents includes various exhibits that were not introduced at the hearing. The pupil and his mother were given an opportunity to present evidence at the hearing. My review is limited to the actual hearing record and 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; *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995; *Jason K. v. Franklin School District Board of Education*, Decision and Order No. 314 (March 21, 1997). The brief submitted by the parents on behalf of their son does not raise any procedural or substantive issues for consideration.

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 Jeffrey L. [REDACTED] by the New Lisbon School District Board of Education is affirmed.

Dated this 8th day of April, 1997.

*John T. Benson*

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John T. Benson  
State Superintendent of Public Instruction