

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| In the Matter of the Expulsion of CLARENCE S [REDACTED] by the Bonduel School District Board of Education | DECISION AND ORDER 96/97-EX-15 |
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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 16, 1996 decision of the Bonduel School District Board of Education to expel the above named pupil from the Bonduel School District for a four day period from December 17, 1996 through December 20, 1996. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on February 7, 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 December 4, 1996 from the Superintendent of the Bonduel 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 Bonduel School District. The Notice was sent to the pupil and his parent by regular mail. The Notice alleged that the pupil while at school or while under the supervision of a school authority, possessed a firearm. Specifically the Notice alleged the pupil possessed firearms in his car on school property on December 3, 1996. A copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter.

The hearing was held in closed session on December 16, 1996. The pupil and his grandparent appeared at the hearing without counsel. According to the summary of the closed session, the school district administration outlined the evidence concerning the grounds for expulsion. Specifically, on December 3, 1996 school officials found 2 unloaded rifles and shells in the pupil's vehicle which was parked in the school parking lot. According to the summary, the school officials agreed there was no apparent intent to have the guns at school because they were found only 2 days after hunting season. The pupil and his grandparent were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations. The pupil's grandfather explained that the pupil forgot to remove the guns from the vehicle after hunting.

After the hearing, the school board deliberated in closed session. The board then voted to expel the pupil for 4 days. The record does not contain any findings that the board made

regarding the grounds for expulsion. Further, the record does not contain a finding that the interests of the school demand the student's expulsion. Finally the record contains a letter from the district administrator to the pupil dated December 19, 1996, advising him of the dates of his expulsion. The record does not contain an Expulsion Order.

The appeal letter in this case argues that the pupil did not intend to possess the firearms at school and should not be punished for an unintentional act.

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.

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. As discussed above, the record does not contain findings by the board regarding the grounds for expulsion, nor does it contain a finding that the interests of the school demand expulsion. Each of these findings are required by law. The board may well have made these required findings, but I am unable to determine that they did so based on review of the record. Further, while a post hearing letter was sent to the pupil regarding the dates of expulsion, the record does not contain an order of expulsion sent to the pupil and to his parent. Each of these omissions requires reversal. See e.g. *Phillip C. by the Wausaukee School District Board of Education*, Decision and Order No. 280, (March 22, 1996); *Russell B. v. Muskego-Norway School District Board of Education*, Decision and Order No. 175 (February 28, 1991).

Given the alleged conduct in this case, the board was apparently very lenient in the penalty they chose to impose. In reversing this expulsion, I do not wish to minimize the seriousness of the allegations or to substitute my judgement for that of the board. Further, the board may choose to correct the procedural errors cited above by making the necessary findings and sending an expulsion order to the pupil and his parent. Because the errors cited above occurred after the hearing, the findings and order could be based upon evidence already received at the December 16 1996 hearing if the board chooses to correct the procedural errors in that manner. See e.g. *Nicole*

P. v. the Crandon School District Board of Education, Decision and Order No. 193 (May 29, 1992).

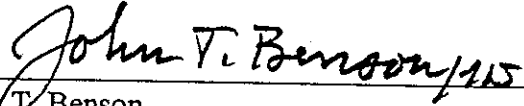
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Clarence S [REDACTED] by the Bonduel School District Board of Education is reversed.

Dated this 10th day of April, 1997.



John T. Benson
State Superintendent of Public Instruction