

THE STATE OF WISCONSIN
BEFORE
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
BRYAN O [REDACTED]
by the Milwaukee Public School District
Board of School Directors

DECISION AND ORDER
96/97-EX-18

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 January 29, 1997 order of the Milwaukee Public School District Board of School Directors to expel the above named tenth grade pupil from the Milwaukee Public School District until June 11, 1997. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on February 28, 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 entitled "Notice of Expulsion Hearing" dated January 8, 1997 from the student services coordinator of the Milwaukee Public School District. The letter advised that a hearing would be held on January 15, 1997 which could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his mother. The letter alleged that the pupil engaged in conduct while at school and under the supervision of a school authority which endangered the property, health and safety of others. The letter specifically alleged that on December 18, 1996 the pupil was at school and in possession of marijuana and marijuana paraphernalia. A summary of the rights pupils and parents possess in the expulsion hearing process accompanied the letter. Minutes of the expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on January 15, 1997 before an Independent Hearing Panel (hereinafter "Panel"). 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 Panel deliberated in closed session. The Panel found the pupil did engage in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others and 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 Panel, dated January 15, 1997, was mailed separately to the pupil and his mother. The order recommended the pupil's expulsion until June 11, 1997. On January

29, 1997 the Milwaukee Public School's Board of School Directors adopted the Panel's expulsion order expelling the pupil until June 11, 1997.

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 mother challenges the fairness of the school's expulsion policy as it relates to her son since another student who allegedly engaged in similar misconduct was not expelled. She also argues that the length of her son's expulsion is unwarranted.

With respect 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).

With respect to the length of the expulsion, 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).

As previously indicated, my role is limited to a review of whether the statutory procedures were followed by the school district. In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

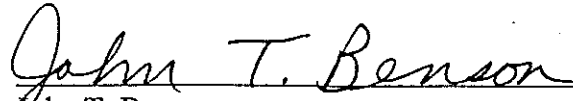
CONCLUSIONS OF LAW

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 Bryan O [REDACTED] by the Milwaukee Public School District Board of School Directors is affirmed.

Dated this 14th day of April, 1997.



John T. Benson
State Superintendent of Public Instruction