

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JASON Y [REDACTED]</p> <p>by the Janesville School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-21</p>
--	---

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 3, 1997 order of the Janesville School District Board of Education to permanently expel the above named 9th grade pupil from the Janesville School District. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on March 17, 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 January 8, 1997 from the district administrator of the Janesville School District. The letter advised that a hearing would be held on January 20, 1997 which could result in the pupil's expulsion from the Janesville School District. The letter was sent separately to the pupil and his parent. The letter was also sent to the pupil's foster parents with whom he was residing. The letter alleged that the pupil engaged in conduct while on school grounds that endangered the property, health or safety of others. The letter specifically alleged that on January 7, 1997 the pupil tried to start another student's sweater on fire. A current copy of sec. 120.13(1)(c), Wis. Stats., as well as a summary of pupil and parent rights in expulsions, was included with the letter. Minutes of the school board expulsion hearing, and disciplinary, attendance and academic records are also part of the record.

The hearing was held in closed session on January 20, 1997. At the hearing the school district administration presented evidence concerning the grounds for expulsion which included summaries taken from 2 students who witnessed the incident, as well as the pupil's admission that he had held a cigarette lighter up to another student's sweater. The pupil or his parent did not appear at the hearing, however; the pupil's father made a presentation on behalf of the pupil by telephone. The pupil's father indicated that the pupil's behavior had been improving when he was on medication for attention deficit disorder (ADD). The pupil's father stated he had been taken off medication without his knowledge. The father also argued that the pupil should have received some special consideration from the district due to his medical condition. According to the minutes of the hearing, the pupil's father was then advised of his right to request a sec. 504 hearing. At the time of the expulsion hearing, the pupil was not identified as having exceptional

education needs (EEN). Records suggested that he had received ED (emotional disturbance) services in a former district in 3rd and 4th grade. Further, he had been evaluated and found to be not EEN in 1994 by another former district.

After the hearing, the school board deliberated in closed session. The board found the pupil did engage in conduct while at school which endangered the property, health or safety of others and violated school rules. The school board further found that the interests of the school demand the student's expulsion. The finding and order for expulsion, dated February 3, 1997, was mailed separately to the pupil and his parent. The order stated the pupil was expelled permanently from the Janesville School District.

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 his appeal letter argues that the district should have considered whether the pupil's behavior was caused by a handicapping condition. I do not have authority to address that argument in the context of an expulsion appeal. See e.g. *Tyrell G. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996). The parent may request a hearing under the specific provisions governing special education to children with EEN and/or under sec. 504 in order to have his concerns addressed. The parent may contact the district or my staff for more information regarding his rights in that regard.

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

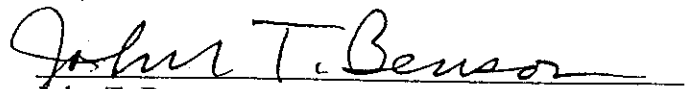
CONCLUSIONS OF LAW

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 Jayson Y [REDACTED] by the Janesville School District Board of Education is affirmed.

Dated this 25th day of April, 1997.


John T. Benson
State Superintendent of Public Instruction