

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JEREMY B [REDACTED]</p> <p>by the Monona Grove School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-19</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 March 5, 1997 order of the Monona Grove School District Board of Education to expel the above named pupil from the Monona Grove School District for the remainder of the 1996-97 school year. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on March 3, 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 February 14, 1997 from the district administrator of the Monona Grove School District. The letter advised that a hearing would be held on February 25, 1997 which could result in the pupil's expulsion from the Monona Grove 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 that between September 23, 1996 and February 5, 1997 the pupil repeatedly violated school rules including insubordination to teaching staff, fighting on the school bus and being disruptive and disrespectful in class. Attached to the notice were copies of the disciplinary referrals detailing each alleged school rule violation. The letter included a summary of the rights pupils and parents possess in the expulsion hearing process. Minutes of the school board expulsion hearing, audio tapes of the expulsion hearing, the various disciplinary referrals and the student handbook are also part of the record.

The hearing was held in closed session on February 25, 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 guilty of 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 March 5,

1997, was mailed separately to the pupil and his mother. 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 pupil's mother raises two issues in her appeal letter. First she argues that the evidence did not prove that her son engaged in conduct that could result in expulsion pursuant to the Parent and Student Handbook. Second, she argues that her son's behavior can be dealt with in a less severe manner than expulsion

The pupil's mother challenges the sufficiency of the evidence, arguing that the evidence presented at the hearing was insufficient to prove that her son committed any expellable offenses according to the Monona Grove Parent and Student Handbook. It has repeatedly been held that arguments concerning the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Tiawan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Further, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994).

It is undisputed that the pupil and his mother received the Parent and Student Handbook at the beginning of the school year. As the district points out, the Handbook states in part:

SCHOOL CODE OF CONDUCT AND RULES... any behavior that impacts negatively on this type of environment will be dealt with strongly. Examples of such negative behavior that are not acceptable at Monona Grove include the following:

... fighting or disorderly conduct

disrespect or insubordination to staff...

... The various actions or range of consequences that may be used to help correct student conduct that is in violation of school expectations and regulations include the following:

... Expulsion from school

I conclude it was reasonable for the board to find that the pupil repeatedly violated school rules based on the evidence.

With respect to the argument that the penalty of expulsion is too severe, it has repeatedly been 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 set out at 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).

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 comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Jeremy B [REDACTED] by the Monona Grove School District Board of Education is affirmed.

Dated this 25th day of April, 1997.



John T. Benson
State Superintendent of Public Instruction