

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of JUSTIN P [REDACTED] by the Cornell School District Board of Education	DECISION AND ORDER 96/97-EX-24
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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 25, 1997 order of the Cornell School District Board of Education to expel the above named pupil from the Cornell School District for the remainder of the 1996-97 semester. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on March 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 March 17, 1997 from the school district clerk of the Cornell School District. The letter advised that a hearing would be held on March 24, 1997 which could result in the pupil's expulsion from the Cornell 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. A summary was attached to the Notice outlining the various school rule violations and the dates they were alleged to have occurred. The letter specifically alleged 14 violations of school rules including disregard for the authority of school staff and failure to serve detentions. A current copy of sec. 120.13(1)(c), Wis. Stats., was printed on the back of the letter. Minutes of the school board expulsion hearing, the various student discipline referral forms as well as a copy of the school rules from the student handbook are part of the record.

The hearing was held in closed session on March 24, 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 and ordered his expulsion for the remainder of the 1996-1997 semester. A letter dated March 25, 1997 indicating the board's decision was mailed separately to the pupil and his parents.

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 raise several issues in their appeal letter. First, they argue that their son does not deserve to be expelled and in support they provide a number of letters of support from individuals who know their son. Second, they argue that the rule violations do not provide

sufficient evidence warranting expulsion, but rather, some lesser form of discipline. Last, they argue that two individuals from the administration allegedly were involved in the school board's deliberations.

Because the board failed to comply with the statutory requirements, I am compelled to reverse this expulsion decision. The record in this case fails to reflect the necessary finding by the board that the interests of the school demand the pupil's expulsion. Neither the minutes nor any written document indicates this finding was made by the board.¹ This omission requires reversal. *Paul R. v. East Troy Community School District Board of Education*, Decision and Order No. 254 (June 21, 1995); *Mark P. v. Marinette School District Board of Education*, Decision and Order No. 236 (August 26, 1994); *Michael S. v. MPS School District Board of Education*, Decision and Order No. 128 (May 10, 1985).

It may be possible for the board, without completely rehearing the case, to correct its omission. See decisions in *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992) *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992) and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996).

I reverse this decision very reluctantly. However, I am bound to review expulsion decisions for compliance with statutory procedure. This decision in no way condones the conduct of the pupil in this case.

The other issues raised by the pupil's parents are not necessary to consider since I am reversing this decision on the basis of a failure to comply with sec. 120(13)(1)(c) Wis. Stats.

¹ My staff made two separate inquiries to the school district to determine if the record forwarded to me for review was complete. No further documentation was provided.

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I therefore reverse this expulsion.

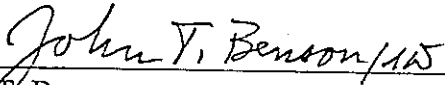
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board 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 Justin P. [REDACTED] by the Cornell School District Board of Education is reversed.

Dated this 26th day of June, 1997.



John T. Benson
State Superintendent of Public Instruction