

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Justin E. [REDACTED] by the Antigo Unified School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-28</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 May 20, 1997 order of the Antigo Unified School District Board of Education to expel the above named pupil from the Antigo Unified School District for the remainder of the 1996-97 school year and the 1997-98 school year. This appeal was filed by Rebecca Eldridge, the pupil's parent and was received by the Department of Public Instruction on June 23, 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 May 13, 1997 from the superintendent of the Antigo Unified School District. The letter advised that a hearing would be held on May 20, 1997 which could result in the pupil's expulsion from the Antigo Unified School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that Justin, a ninth grader at Antigo Senior High School, was guilty of repeated refusal or neglect to obey the rules and that he was a pupil who was over the age of 16 and repeatedly engaged in conduct while at school or under the supervision of school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority. The letter alleged, by reference to an attached letter from the Dean of Students and a computer generated discipline profile, that Justin repeatedly engaged in rule violations including insubordination, tardiness, truancy, unpreparedness for class, sleeping on the floor during Algebra class, and daily disruption in class. A current copy of sec. 120.13(1)(c), Wis. Stats., was not included, however, all the rights and responsibilities listed in sec. 120.13(1)(c) were included in the notice of hearing. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on May 20, 1997. The pupil and his parents appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Mr. Zamzow, Dean of Students, provided evidence that Justin had previously been expelled for five weeks due to similar conduct. Mr. Zamzow stated that Justin's behavior did not improve since his first expulsion, despite

warnings from Mr. Zamzow. Mr. Zamzow indicated the misbehavior in class caused daily disruptions and that teachers were unable to hold class when Justin was present. The teachers had to routinely remove Justin from class. Justin's actions became progressively more disruptive, culminating on May 9, 1997 when he was removed from English class for repeated tardiness and from Algebra class for crushing an assigned worksheet, throwing it away and then laying down on the floor of the classroom because he said he was tired. After being warned of a possible expulsion on May 9, Justin returned to school on May 12 and continued to disrupt class by challenging the teachers authority and causing the teacher to stop instruction. He received three separate discipline referrals that day and was removed from Algebra class by the substitute teacher. The pupil and his parents 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 Justin 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 that the pupil also violated 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 May 20, 1997, was mailed separately to the pupil and his parents. The order stated Justin was expelled for the remainder of the 1996-97 school year and the 1997-98 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 appeal letter in this case raises two issues. The parent alleges that expulsion was "unfair and unjustified". 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).

The parent also alleges that she did not know the school board planned to consider expulsion at the expulsion hearing. This assertion is contradicted by the notice of hearing which was sent to the parent and the pupil. Specifically, the notice states

“You have been referred to the school Board of the Unified School District of Antigo for expulsion proceedings... This hearing may result in your expulsion from the schools... which may extend at a maximum to your 21st birthday..”

However, because I find the school district did not comply with all of the procedural requisites, I am compelled to reverse this expulsion. The school board alleged two grounds for expulsion in their notice. First, that Justin was guilty of *repeated* refusal or neglect to obey the rules and second, that he was over the age of 16 and repeatedly engaged in conduct while at school or under the supervision of school authority that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority.¹ However, the Findings of Fact and Expulsion Order indicate a third statutory ground for expulsion, specifically that the student’s misconduct while at school *endangered* the health and safety of himself and others and that he was in violation of school rules and district policy.² Because the school district is required to provide the pupil advance notice of the statutory grounds under which it intends to proceed, it cannot make its finding based upon a third statutory ground for which the student did not receive notice.

The expulsion statute provides in part:

¹ This second ground for expulsion could not be proven as Justin was not over the age of sixteen at the time of the expulsion.

² Violation of school rules and district policy is not a ground for expulsion. The school board must find *repeated* violation of school rules or district policy. The specific rules which were violated must be listed in the findings.

120.13 School Board Powers.

(1) (c) 4. Not less than 5 days' written notice of the hearing...shall be sent...The notice shall state all of the following:

a. **The specific grounds under subd. 1., 2. or 2m** and the particulars of the alleged conduct upon which the expulsion proceeding is based. (Emphasis added.)

In *Benjamin L. v. Maple School District Board of Education*, Dec. and Order No. 214, Dec. 21, 1993, my predecessor stated in a case involving the bringing of marijuana and alcohol to school:

Further, the statutory basis for the expulsion must be reflected in the notice of expulsion hearing, must be supported by evidence in the record, and must be reflected in the ultimate findings of the board. [Citing *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, May 17, 1991.]

It has long been precedent in these cases that the notice requirements of the statute are mandatory in nature and that failure to comply with the statute's requirements renders the expulsion void. Even where a pupil unequivocally admits misconduct that is grounds for expulsion, the failure to provide the mandated, advance, statutory notice calls for reversal. See *Christopher K. v. West Allis School District*, Decision and Order No. 166, April 18, 1990; *Travis V. v. Waterloo School District*, Decision and Order No. 143, July 2, 1986; *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178, May 17, 1991; *Ryan G. v. Sparta Area School District*, Decision and Order No. 325, May 19, 1997. Because the notice of expulsion and the finding of facts and conclusions of law are not based upon at least one common statutory ground, the expulsion must be reversed.

Nevertheless, it may be possible for the board, without completely rehearing the case, to correct this error. 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.

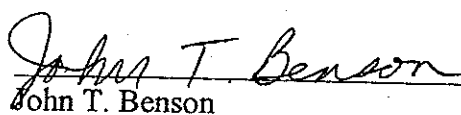
CONCLUSIONS OF LAW

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 E [REDACTED] by the Antigo Unified School District Board of Education is reversed.

Dated this 24th day of July, 1997.



John T. Benson

State Superintendent of Public Instruction