

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

JOHN MICHAEL N [REDACTED]  
by the Random Lake School District  
Board of Education

DECISION AND ORDER  
96/97-EX- 26

**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 8, 1997 order of the Random Lake School District Board of Education to expel the above named pupil from the Random Lake School District until his 21st birthday, with an opportunity for readmission at the second semester of the 1997-98 school year. This appeal was filed by Mr. and Mrs. Jon Ninneman, the pupil's parents and was received by the Department of Public Instruction on June 10, 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 April 21, 1997 from the district administrator of the Random Lake School District. The letter advised that a hearing would be held on May 6, 1997 which could result in the pupil's expulsion from the Random Lake School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil, a 10th grade student at Random Lake High School, was guilty of repeated refusal and neglect to obey the rules. The letter specifically alleged that between May 23, 1996 and April 18, 1997, John repeatedly acted disrespectful and disobedient to teachers and staff, defaced school property, repeatedly engaged in inappropriate hallway behavior, repeatedly disrupted class, repeatedly used profanity, repeatedly violated the dress code by wearing head gear and engaged in a physical altercation with a student. The rights of the student and parent as described in sec. 120.13(1)(c), Wis. Stats., were listed and the pupil was referred to sec. 120.13(1)(c), Wis. Stats. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on May 6, 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. 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 John did repeatedly refuse 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 May 8, 1997, was mailed separately to the pupil and his parents. The order stated John Ninneman was expelled until his 21st birthday. It further provided for John's readmission at the second semester of the 1997-98 school year if he satisfied several listed conditions.

### 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 four issues which require consideration. First, the pupil raises an issue regarding John's status as an ADD and Diabetic student. After academic struggles and behavior problems in the fall of 1996, a formal 504 evaluation was completed in January 1997 and John was determined to be disabled. An accommodation plan was written in February 1997. On April 25, 1997, prior to the expulsion hearing, the school district conducted a record review of John. It was determined that his behavior was not a manifestation of his 504 disability. At no time was John identified as an Exceptional Educational Needs (EEN) student. Although this department is not authorized to enforce sec. 504, it is generally understood that sec. 504 prohibits expulsion of a pupil for conduct which is a manifestation of his disability. As the district has conducted its "manifestation review" and found that John's behavior was not a result of his disability, I am not authorized to review that determination in the context of this expulsion appeal under sec. 120.13(1)(c), Stats. See *Jesse M.K. v. Tri-County Area School District Board of Education* Decision and Order No. 266, January 2, 1996. If the pupil or parent are dissatisfied with the district's determination, they may use the appeal procedures provided in sec. 504 to challenge that determination.

Secondly, the pupil alleges a conflict of interest because one of his behavior referrals involved a verbal altercation on November 4, 1996 with the son of a school board member. There is no indication in the record the name of the student involved in the November 4, 1996 incident or the other student's relationship to the school board. The school district indicates in its response that Mr. Jones is the board member in question. Mr. Jones did not participate in the

board's expulsion decision. Furthermore, the law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962).

In this case, I find the pupil's assertion of bias or conflict insufficient to overcome this presumption. The record contains no evidence of actual bias or conflict, nor does it reflect circumstances which would lead to a high probability of bias or conflict. See *Nicholas E. v. Lodi School District Board of Education*, Decision and Order No. 303, October 17, 1996; *Kathleen W. v. Tri-County Area School Board of Education*, Decision and Order No. 130, May 10, 1985.

The third and fourth issues raised by the pupil concern specific aspects of the expulsion order. First, he questions the order's requirement that he attend school during his expulsion to be eligible for readmission at the second semester. School attendance is compulsory, regardless of expulsion. See sec. 118.15, Stats. The inclusion of this condition for readmission is within the district's discretion. Second, he requests that a panel be established to review his case for readmission rather than the high school principal as stated in the order. The inclusion of this condition is also within the district's discretion. I do not review matters relating to the length, terms and severity of expulsion as they are solely within the school districts authority, provided all the procedural requirements are met. *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 this case, all procedural requirements have been met.

Furthermore, in the school district's response, it indicated a willingness and desire to discuss the issue of where John may get an education during his expulsion. The school district also indicated a willingness to grant the Ninneman's request for a panel to determine John's eligibility to return to school. I encourage the school district, John and his parents to discuss these issues to reach a mutually agreeable solution.

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

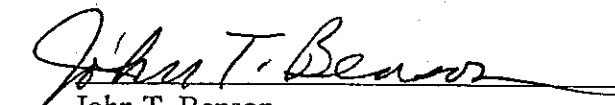
#### CONCLUSIONS OF LAW

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 John N [REDACTED] by the Random Lake School District Board of Education is affirmed.

Dated this 5th day of August, 1997.

  
John T. Benson  
State Superintendent of Public Instruction