

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>JUSTIN O [REDACTED]</p> <p>by the Monona Grove School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-29</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 June 10, 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 1997-98 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on July 8, 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 28, 1997 from the district administrator of the Monona Grove School District. The letter advised that a hearing would be held on June 2, 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 certified mail. The letter alleged that the pupil was guilty of repeated refusal or neglect to violate school rules and that he engaged in conduct while on school grounds endangered the health, safety or property of others. The letter specifically alleged eleven incidents of school rule violations from October 17, 1996 to May 21, 1997 which included insubordination and disruption as well as flicking a lighter in class. The rights listed in sec. 120.13(1)(c), Wis. Stats., were summarized and included in the notice of expulsion hearing. Minutes of the school board expulsion hearing, including exhibits, and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on June 2, 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 that 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 repeatedly 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 June 10, 1997, was mailed separately to the pupil and his parents. The order stated Justin was expelled for 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 several issues which require consideration. First, the parents allege that the expulsion was too harsh. 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). I find that the board complied with all procedural requirements of sec. 102.13(1)(c), Stats., and therefore affirm the expulsion.

Secondly, the parents allege that they were given insufficient notice of the hearing. The parents indicate they did not have sufficient time to prepare for the hearing, however, upon review of the complete record, including audio tapes, there is no indication in the record that they requested a continuance of the hearing. The statute requires that a hearing be held no less than five days after the notice of expulsion hearing is given. See sec. 120.13(1)(c)(4), Stats. These five days include weekends and holidays. *Marc G. v. Maple School District Board of Education*, Decision and Order No. 213, (December 20, 1993); *Joshua K. v. Clinton Community School District Board of Education*, Decision and Order No. 216, (January 31, 1994); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222, (March 10, 1994). Therefore, I find that the school district complied with the notice requirement by mailing the notice on May 28 and holding the hearing on June 2, five days later.

Thirdly, the parents allege that there that two incidents (March 14 and May 21) did not occur in the way in which they were alleged and thus there was insufficient evidence to support an expulsion. 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). A review of the record indicates that the board acted reasonably in concluding that Justin repeated violated school rules and endangered the health, safety and property of others.

Fourth, the parents also allege that insubordination is not a ground for expulsion. The department has repeatedly upheld expulsions based upon repeated violations of school rules, including insubordination. *Jeremy B. v. Monona Grove School District Board of Education*, Decision and Order No. 324 (May 8, 1997); *Danielle A. W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 31, 1997); *Heather K. v. D.C. Everest Area School District Board of Education*, Decision and Order No. 308 (January 15, 1997); *Hope B. v. Randolph School District Board of Education*, Decision and Order No. 225 (April 12, 1994).

Fifth, the parents allege that they were informed that representation by an attorney at the expulsion hearing was not necessary. There is no evidence in the record to indicate that they were given this advice. In fact, the evidence in the record indicates that they were advised of their right to counsel as indicated in the notice of expulsion hearing.

Finally, the parents allege that Justin should have been given alternative schooling or an EEN evaluation. With regard to a pupil with an *identified* exceptional education need, the State Superintendent has reversed an expulsion based on a school board's failure to consider whether a pupil's handicapping condition was related to the misconduct. See *Anita P. v. Janesville School District Board of Education*, Decision and Order No. 124 (February 5, 1985) and *Joe M. v. Milton School District Board of Education*, Decision and Order No. 125 (February 22, 1985). These decisions were based on the particular requisites and protections under both state and federal law relating to pupils with an identified EEN.

With regard to all other aspects of special education law, however, the State Superintendent has determined that an expulsion appeal is not the appropriate context within which to challenge a district's application of special education provisions to a particular pupil. Such a challenge is beyond the scope of sec. 120.13(1)(c), Wis. Stats. *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). There is no evidence in the record that Justin was identified as an EEN student, thus this issue is beyond the scope of this review.

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

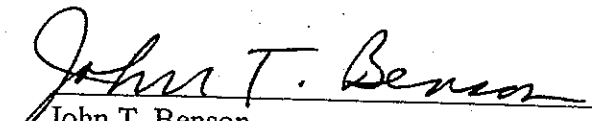
CONCLUSIONS OF LAW

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 Justin O [REDACTED] by the Monona Grove School District Board of Education is affirmed.

Dated this 4th day of September, 1997.


John T. Benson
State Superintendent of Public Instruction