

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>DEL C [REDACTED]</p> <p>by the Stevens Point School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-31</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 December 2, 1996 order of the Stevens Point School District Board of Education to expel the above named pupil from the Stevens Point School District for the remainder of the 1996-97 school year and the first semester of the 1997-98 school year. This appeal was filed by Mr. and Mrs. Cherney, the pupil's parents and was received by the Department of Public Instruction on July 21, 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 November 18, 1996 from the district administrator of the Stevens Point School District. The letter advised that a hearing would be held on December 2, 1996 which could result in the pupil's expulsion from the Stevens Point School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil possessed a handgun on school grounds, in violation of the Guns Free School Act of 1994. The letter specifically alleged that Del was in possession of a firearm while at Ben Franklin Junior High School on November 13, 1996. 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 are also part of the record.

The hearing was held in closed session on December 2, 1996. 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 Del did possess a firearm while on school grounds 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 December 2, 1996, was mailed separately to the pupil and his parents. The order

stated that Del was expelled for the remainder of the 1996-97 school year and the first semester of the 1998-98 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 one issue which requires consideration. The parents plead with the Superintendent to shorten the length of Del's expulsion. 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.

The school district correctly points out its discretion to modify the statutorily required one year expulsion for possession of a firearm on school grounds. See sec. 120.13(1)(g), Stats. Therefore, if the parents wish for a modification of the expulsion, it is more appropriately addressed to the school board.

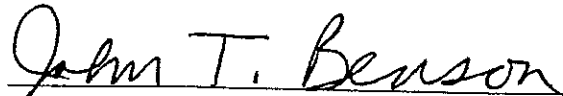
#### CONCLUSIONS OF LAW

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 Del C [REDACTED] by the Stevens Point School District Board of Education is affirmed.

Dated this 10th day of September, 1997.



John T. Benson

State Superintendent of Public Instruction