

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of JENNIFER L. [REDACTED] by the Milwaukee Public School District Board of School Directors	DECISION AND ORDER 96/97-EX-34
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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 28, 1997 order of the Milwaukee Public School District Board of School Directors to expel the above named pupil from the Milwaukee Public School District until January 29, 1998. This appeal was filed by the pupil's father and was received by the Department of Public Instruction on August 4, 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 12, 1997 from the student services coordinator of the Milwaukee Public 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 Milwaukee Public School District. The letter was sent separately to the pupil and her mother. The letter alleged that the pupil engaged in conduct while at school and under the supervision of a school authority which endangered the property, health and safety of others. The letter specifically alleged that on April 25, 1997 the pupil was at Rufus King High School and in possession with the intent to distribute a controlled substance (marijuana). A summary of the rights pupils and parents possess in the expulsion hearing process accompanied the letter. Minutes of the expulsion hearing and a transcript of the hearing are also part of the record.

The hearing was held in closed session on May 20, 1997 before an Independent Hearing Panel (hereinafter "Panel"). The pupil and her mother appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations.

After the hearing, the Panel deliberated in closed session. The Panel found the pupil 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 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 Panel, dated May 20, 1997, was mailed separately to the pupil and her mother. The order recommended the pupil's expulsion until January 29, 1998. On May 28,

1997 the Milwaukee Public School's Board of School Directors adopted the Panel's expulsion order expelling the pupil until January 29, 1998.

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 (Lemy 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 mother challenges the fairness of the school's expulsion policy, alleging that the punishment was unfair or too severe and that the panel was somehow biased or predisposed to expelling Jennifer.

With respect to the fairness and severity of disciplinary measures imposed by schools, I am without authority to address those issues. 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).

With regards to whether the panel was biased or predisposed to expulsion as alleged by the parent, 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). The independent hearing panel, acting under the authority of the school board, is similarly entitled to this presumption. In this case, I find the pupil's assertion of bias or predisposition insufficient to overcome this presumption. The record contains no evidence of actual bias or predisposition, nor does it reflect circumstances which would lead to a high probability of bias or predisposition. 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.

As previously indicated, my role is limited to a review of whether the statutory procedures were followed by the school district. In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

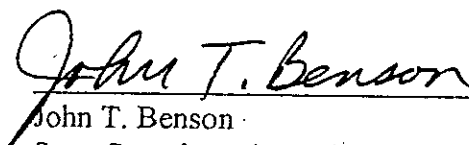
CONCLUSIONS OF LAW

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 Jennifer L. [REDACTED] by the Milwaukee Public School District Board of School Directors is affirmed.

Dated this 15th day of September, 1997.



John T. Benson
State Superintendent of Public Instruction