

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  ALFRED L. [REDACTED]  by the Oconto Falls School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-35</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 August 2, 1997 order of the Oconto Falls School District Board of Education to expel the above named pupil from the Oconto Falls School District for the remainder of the 1997-98 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on August 26, 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 July 21, 1997 from the district administrator of the Oconto Falls School District. The letter advised that a hearing would be held on July 28, 1997 which could result in the pupil's expulsion from the Oconto Falls School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil engaged in conduct while on school grounds that violated school rules and that could endanger his safety or the well-being of other students. The letter specifically alleged Alfred possessed marijuana. The letter included a summary of the rights regarding expulsion as listed in sec. 120.13(1)(c), Stats and a copy of sec. 120.13(1)(c), 1995 Wis. Stats., was included with the letter.

The hearing was held on July 28, 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 Alfred 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, was dated August 2, 1997. The order stated Alfred was expelled for the remainder of the 1997-98 school year with an opportunity for early readmission on September 15, 1997 and the 15th of every month until the expulsion period is complete. Early readmission was contingent upon Alfred completing 40 hours of AODA counseling and a "normal drug screen".

## 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. The parent does not agree with one of the conditions of early readmission. 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).

However, because I find that the board did not comply with the procedural requirements set out in sec. 120.13(1)(c), Stats. I am compelled to reverse this expulsion. First, the basis for expulsion stated in the order of expulsion is not a basis listed in sec. 120.13(1)(c), Stats. The board expelled Alfred for *violating school rules*. The statute requires *repeated violations of school rules*.<sup>1</sup> Secondly, there is no statutory grounds for the expulsion listed in the expulsion order. Additionally, the board did not submit, as part of the record, copies of the school board minutes. Nor did it provide proof that the expulsion order was mailed to separately to pupil and parent.

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).

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<sup>1</sup> It should be noted that the board gave Alfred notice that it may expel on the grounds that he endangered the health and safety of students. Possession of Marijuana on school grounds has repeatedly been upheld as dangerous and thus endangering the health and safety of students. See *Joshua S. v. Beloit -Turner School District Board of Education*, Decision and Order no. 307, January 14, 1997; *Matthew K. v. Hartford Union High School District Board of Education*, Decision and Order No. 276, March 11, 1996; *Brian C. v. Sheboygan Area School District Board of Education*, Decision and Order No. 158, September 9, 1988 and *William S. v. Suring School District Board of Education*, Decision and Order No. 98, June 17, 1982.

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.

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I therefore reverse this expulsion.

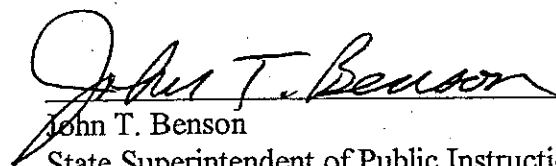
### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board 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 Alfred L. [REDACTED] by the Oconto Falls School District Board of Education is reversed.

Dated this 24th day of September, 1997.

  
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John T. Benson  
State Superintendent of Public Instruction