

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Justin E. [REDACTED] by the Antigo Unified School District Board of Education</p>	<p>DECISION AND ORDER 96/97-EX-36</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 18, 1997 order of the Antigo Unified School District Board of Education to expel the above named pupil from the Antigo Unified School District for the remainder of the 1996-97 school year and the 1997-98 school year. This appeal was filed by Rebecca Eldridge, the pupil's parent and was received by the Department of Public Instruction on September 18, 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 August 8, 1997 from the superintendent of the Antigo Unified School District. The letter advised that a hearing would be held on August 18, 1997 which could result in the pupil's expulsion from the Antigo Unified School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that Justin, a ninth grader at Antigo Senior High School, was guilty of repeated refusal or neglect to obey the rules. The letter alleged, by reference to an attached letter from the Dean of Students and a computer generated discipline profile, that Justin repeatedly engaged in rule violations including insubordination, tardiness, truancy, unpreparedness for class, sleeping on the floor during Algebra class, and daily disruption in class. All the rights and responsibilities listed in sec. 120.13(1)(c) were summarized and included in the notice of hearing. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on August 18, 1997. The pupil and his mother appeared at the hearing without counsel. At the hearing the school district administration incorporated the evidence presented at a previous expulsion hearing held on May 20, 1997.<sup>1</sup> At the May 20, 1997 hearing the district presented evidence concerning the grounds for expulsion. Mr. Zamzow, Dean of Students, provided evidence that Justin had previously been expelled for five weeks due to similar conduct. Mr. Zamzow stated that Justin's behavior did not improve since his first expulsion, despite warnings from Mr. Zamzow. Mr. Zamzow indicated the misbehavior in class caused daily disruptions and that teachers were unable to hold class when

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<sup>1</sup> The previous expulsion was overruled by the State Superintendent because of a procedural error in the findings and conclusions contained in the expulsion order.

Justin was present. The teachers had to routinely remove Justin from class. Justin's actions became progressively more disruptive, culminating on May 9, 1997 when he was removed from English class for repeated tardiness and from Algebra class for crushing an assigned worksheet, throwing it away and then laying down on the floor of the classroom because he said he was tired. After being warned of a possible expulsion on May 9, Justin returned to school on May 12 and continued to disrupt class by challenging the teachers authority and causing the teacher to stop instruction. He received three separate discipline referrals that day and was removed from Algebra class by the substitute teacher. The pupil and his parents were given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations at the May 20, 1997 hearing.

After the hearing, the school board deliberated in closed session. The board found Justin was guilty of repeated refusal 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 August 18, 1997, was mailed separately to the pupil and his parents. The order stated Justin was expelled for the remainder of the 1996-97 school year and 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 one issue. The parent alleges that expulsion was not supported by sufficient evidence. It has been repeatedly 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 *Taiwan 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. *Daniel A. v. Mauston School District Board of Education*,

Decision and Order No. 324 (May 8, 1997) *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).

Based upon a review of the testimony and behavior records submitted at the May 20, 1997 hearing, there was sufficient evidence to find Justin guilty of repeated refusal to obey school rules. The evidence showed that throughout the 1996-97 school year Justin violated school rules on a regular basis. Thus, a reasonable review of the evidence supports the board's conclusions.

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

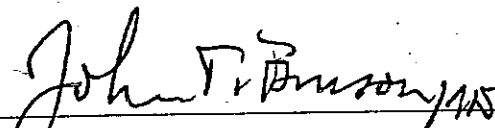
#### CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of Justin E. [REDACTED] by the Antigo Unified School District Board of Education is affirmed.

Dated this 16th day of October, 1997.

  
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John T. Benson  
State Superintendent of Public Instruction