

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of ADAM C [REDACTED] by the Evansville Community School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-01</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 September 15, 1997 order of the Evansville Community School District Board of Education to expel the above named pupil from the Evansville Community School District for the remainder of the 1997-98 school year, until the first day of school in August 1998. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on October 1, 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 September 9, 1997 from the district administrator of the Evansville Community School District. The letter advised that a hearing would be held on September 15, 1997 which could result in the pupil's expulsion from the Evansville Community School District. The letter was sent separately to the pupil and his parents by regular mail. The letter alleged that Adam, a tenth grade student, engaged in conduct while on school grounds that endangered the property, health and safety of others while at school, under the supervision of school authority. The letter specifically alleged that:

1. On August 29, 1997, Adam engaged in willful destruction of public property by spray painting graffiti in the entrance area south of the band room.

2. On September 4, 1997, Adam possessed a black handled kitchen knife on school grounds. He displayed the knife to students and threatened to stab another student if the student did not give back some money owed him. On this same day he spray painted graffiti on the handicapped bathroom stall in the men's bathroom by the school Guidance area.

3. On September 5, 1997 he possessed marijuana on the school grounds.

The notice of expulsion included a summary of all the rights listed in sec. 120.13(1)(c), Stats. 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 September 15, 1997. The pupil and his parents appeared at the hearing represented by Attorney Dale Pope. 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 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. 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 September 15, 1997, was mailed to Adam's parents and attorney on September 16, 1997. On October 14, 1997, the expulsion order was mailed separately to the pupil. The order stated that Adam was expelled for the remainder of the 1997-98 school year, until the first day of school in August 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 (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 that requires consideration. The pupil asserts that a copy of the expulsion order was not mailed separately to him. On September 16, 1997, the school district mailed a copy of the expulsion order to Adam's mother, in Evansville and to his father in Jamaica. The district also mailed a copy of the expulsion order to Adam's attorney, Mr. Pope. At the time the pupil filed the appeal in this case, Adam had not been mailed a separate copy of the expulsion order. However, following the appeal letter, the school district mailed a copy, separately, to Adam.

Ordinarily, if a school district does not follow the procedural requirements of sec. 120.13(1)(c), Stats., such as mailing a separate expulsion order to the pupil and parents, an expulsion is overruled. See *Ryan G. v. Sparta Area School District Board of Education*, Decision and Order 325, May 19, 1997; *Clarence S. v. Bonduel School District Board of Education*; Decision and Order 320, April 10, 1997; *Adam S. v. East Troy Community School District Board of Education*, Decision and Order 300, Aug. 9, 1996. When expulsion orders are overruled because of this type of procedural defect, it is possible for the district to remedy the error without rehearing the case. See *Nicole P. v. Crandon School District Board of Education*,

Decision and Order 193, May 29, 1992; *Clarence S. v. Bonduel School District Board of Education*; Decision and Order 320, April 10, 1997; *Adam S. v. East Troy Community School District Board of Education*, Decision and Order 300, Aug. 9, 1996.

In this case, the school district has already taken the appropriate remedial measure. On October 14, 1997, the district mailed a separate copy of the expulsion order to Adam. While this delayed mailing is not the preferred method, the district did cure the defect. Because the district has now complied with the procedural requirement, I affirm this expulsion.¹

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

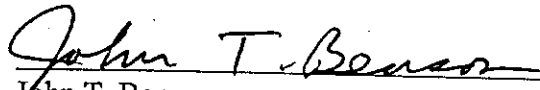
CONCLUSIONS OF LAW

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 Adam C. [REDACTED] by the Evansville Community School District Board of Education is affirmed.

Dated this 26th day of November, 1997.


John T. Benson
State Superintendent of Public Instruction

¹ The pupil asks me to set a standard that would require the district to send the expulsion order to the pupil within a reasonable time. The pupil also wants me to determine what constitutes a "reasonable time". As this is not an issue that needs to be addressed given my finding that the board cured any defect that existed, I decline to make this broad policy decision under these circumstances.