

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

NATHAN H. [REDACTED]

by the West Bend School District
Board of Education

DECISION AND ORDER
97/98-EX-03

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 October 15, 1997 order of the West Bend School District Board of Education to expel the above named pupil from the West Bend School District for the remainder of the 1997-98 school year with the opportunity for conditional readmission for the second semester. This appeal was filed by the pupil's mother and was received by the Department of Public Instruction on November 20, 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 October 1, 1997 from the district administrator of the West Bend School District. The letter advised that a hearing would be held on October 14, 1997 which could result in the pupil's expulsion from the West Bend School District. The letter was sent separately to the pupil and his parents by regular and certified mail. The letter alleged that the pupil repeatedly refused and neglected to obey school rules. The letter specifically alleged insubordinate behavior on September 23, 1997 in the Silverbrook School office. 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 October 14, 1997. The pupil and his mother 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 the pupil repeatedly refused and neglected 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 October 15, 1997, was mailed separately to the pupil and his parents. The order stated Nathan was expelled for the remainder of the 1997-98 school year with the opportunity for conditional readmission for the second semester.

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 pupil's mother asserts that the school should have addressed her child's behavior prior to the expulsion. Unless a child is identified with an exceptional education need or a disability under sec. 504, there

is no legal requirement that the school "address these behaviors" prior to expulsion. See *Michael L. v. New Richmond School District Board of Education*, Decision and Order No. 326 (June 2, 1997); *Michael P. v. Kenosha Unified School District Board of Education*, Decision and Order No. 172 (October 8, 1990). Furthermore, from a review of the tape of the expulsion hearing, it is evident that Nathan was given several notices that his conduct was unacceptable through the use of suspensions and detentions. It is also evident that he was given a verbal warning only days before the final act of misbehavior. 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). The evidence presented at the expulsion hearing included not only the insubordinate behavior and failure to follow rules on September 23, 1997 but also records of his rule violations from January 6, 1996 to September 24, 1997. These violations showed insubordination to teachers and staff, aggression toward other students, the use and possession of tobacco products and lighters, vandalism and failure to serve detentions. The record indicated 67 different offenses from January 3, 1996, twelve of which occurred during the month of September, 1997. The board was presented with sufficient information to support its decision.

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

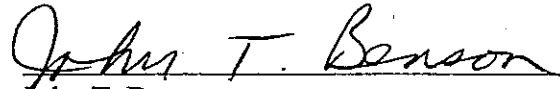
CONCLUSIONS OF LAW

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 Nathan H [REDACTED] by the West Bend School District Board of Education is affirmed.

Dated this 13th day of January, 1998.



John T. Benson
State Superintendent of Public Instruction