THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of CHADWYNN N[redacted] by the Random Lake School District Board of Education	DECISION AND ORDER 97/98-EX-08

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 November 18, 1997 order of the Random Lake School District Board of Education to expel the above named pupil from the Random Lake School District until the pupil reaches age 21, with the opportunity for conditional readmission at the second semester of the 1997-1998 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on December 17, 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 November 5, 1997 from the district administrator of the Random Lake School District. The letter advised that a hearing would be held on November 17, 1997 which could result in the pupil's expulsion from the Random Lake School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil was guilty of repeated refusal or neglect to obey the rules and that he engaged in conduct while on school which endangered the property, health, or safety others. The letter specifically alleged that between October 29, 1996 and November 3, 1997 the pupil engaged in a variety of behaviors, including insubordination, harassment of other students, disruption in the classroom and hallways, placing a shunt directly in a power source creating smoke and heat, repeatedly shorting power source leads, failing to serve detentions, throwing objects in the direction of staff, struggling with a teacher and vandalism. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on November 17, 1997. The pupil did not appear 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's mother was given the opportunity to present evidence, to cross-examine witnesses and to respond to the allegations, however she left the hearing before the conclusion of the questioning.

After the hearing, the school board deliberated in closed session. The board found the pupil did repeatedly violate 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 November 18, 1997, was mailed separately to the pupil and his parents. The order stated Chadwynn was expelled until his 21st birthday, with the opportunity for conditional readmission effective with the second semester of 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 six issues. First, the parent alleges that "No due process was given". I find that all the procedural requirements of sec. 120.13(1)(c), Stats. were met by the board, thus due process was provided. Second, the parent alleges that there was insufficient time to address each complaint. The record indicates that the only representative of the pupil present at the hearing was the pupil's mother and she left the hearing 32 minutes after the commencement of the expulsion hearing and before the conclusion of questioning by the board. The parent has provided no further information regarding which issues were not addressed. Thus, there is insufficient information provided by the appellant to support this ground for error.

Third, the parent claims that Chadwynn was discriminated against because he was labeled a "Bottom Feeder" by the principal in front of the Assistant Superintendent. The pupil provides no further information as to when this comment occurred or under what circumstances it occurred. There is no reference to this comment in the minutes of the expulsion hearing minutes and there is no transcript or tape of the hearing. Assuming the parent is raising this as an affirmative defense, the parent has the burden to show the connection between this sort of allegation and a defense to the misconduct with which the pupil is charged. There is insufficient evidence provided by the appellant to make this connection.[1]

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[1] Wisconsin school law, sec. 118.13, Stats., prohibits "discrimination" against a child if the child is a member of one of 14 "protected classes". These include sex, race, and physical, mental or emotional condition. Each school district is required to have a written pupil non-discrimination complaint process. If a parent believes his or her child is being discriminated against at school, he or she may file a complaint with the district which ultimately must be decided by the school board. This process is further described in the attached information sheet.

The parent also alleges that the pupil was "Used as an example to threthen (sic) and intimidated other students into submission." Again, no further information regarding this conduct is provided by the appellant. There is insufficient evidence to make the necessary connection to the charges of misconduct in this case.

The parent also alleges that there was insufficient evidence to warrant expulsion. The board found that the pupil engaged in a lengthy list of acts of misconduct, consistent with the misconduct alleged in the notice of expulsion hearing. It has repeatedly been 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 *Tiawan 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. *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 the record submitted, the school board's finding are upheld.

Finally, the pupil alleges that "This is not an isolated case this abuse has been going on for the past six to seven years." The pupil provides no further information in this regard. There is insufficient information provided by the appellant to address this ground for error.[2]

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[2] The parent also challenges the location of the school building in relation to the geographical configuration of the school district. The parent alleges this is in violation of the State Constitution. This issue has absolutely no relevance to the expulsion.

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.

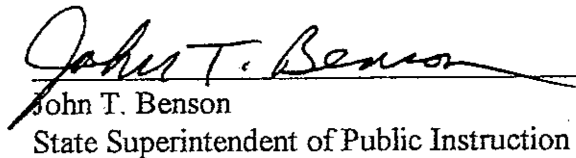
CONCLUSIONS OF LAW

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 Chadwynn N[redacted] by the Random Lake School District Board of Education is affirmed.

Dated this 26th day of January, 1998.



John T. Benson
State Superintendent of Public Instruction