

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Nathan W [REDACTED]</p> <p>by the Wilmot Union High School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-20</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 February 11, 1998 order of the Wilmot Union High School District Board of Education to expel the above named pupil from the Wilmot Union High School District through August 27, 1998. This appeal was filed by the pupil's attorney and was received by the Department of Public Instruction on April 2, 1998.

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 January 29, 1998 from the district administrator of the Wilmot Union High School District. The letter advised that a hearing would be held on February 9, 1998 which could result in the pupil's expulsion from the Wilmot Union High 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 at school or under the supervision of school authority which endangered the property, health or safety of others. The letter specifically alleged that on Wednesday, January 21, 1998, Nathan struck another student 3 or 4 times in his face while in the hallway by the gymnasium between 1:00 and 1:15 pm. An audio tape of the expulsion hearing is also part of the record.

The hearing was held on February 9, 1998. The pupil and his grand 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 grand 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 February 11, 1998, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through August 27, 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 two issues which require consideration. First, the pupil challenges the term of suspension which led up to the expulsion.<sup>1</sup> The State Superintendent lacks

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<sup>1</sup> The pupil's attorney characterizes the suspension as exceeding the 15 day limit allowed by statute. However, based upon the record, it is apparent that Nathan was suspended on January 21, 1998 and was informed orally at the conclusion of the expulsion hearing on February 9, 1998 that he was expelled. This oral notification was

jurisdiction to review this issue. *Madison Metropolitan School District (Lenny G.) v. Wis. D.P.I.*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995); *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994); *Joshua K. v. Clinton Community School District Board of Education*, Decision and Order No. *Jessie K. v. School Board of Joint District No. 2*, Decision and Order No. 131 (June 17, 1985).

Secondly, the pupil alleges that his punishment was unduly harsh or severe. 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. *Nathaniel S. v. Wausau School District*, Decision and Order No. 350 (March 25, 1998); *Troy Y v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993).

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.

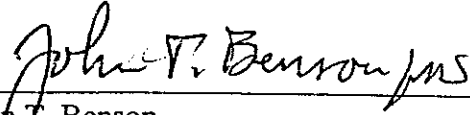
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followed by a written order. At most, Nathan was suspended for 14 school days. This does not violate sec. 120.13(1)(b), Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nathan W [REDACTED] by the Wilmot Union High School District Board of Education is affirmed.

Dated this 27th day of May, 1998.



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John T. Benson  
State Superintendent of Public Instruction