

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Dale B. [REDACTED]

by the Hortonville School District  
Board of Education

DECISION AND ORDER  
97/98-EX-24

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 April 8, 1998 order of the Hortonville School District Board of Education to expel the above named pupil from the Hortonville School District until the start of the second semester of the 1998-99 school year with allowance to attend summer school and the opportunity for early readmission at the beginning of the 1998-99 fall semester. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on April 10, 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 March 25, 1998 from the district administrator of the Hortonville School District. The letter advised that a hearing would be held on April 1, 1998 which could result in the pupil's expulsion from the Hortonville 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 or neglected to obey school rules. The letter specifically alleged numerous rule violations, such as fighting, disruption, insubordination, and failing to attend detentions, occurring between August 25, 1997 and March 24, 1998. 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 April 1, 1998. The pupil and his 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 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 or 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 April 8, 1998, was mailed separately to the pupil and his parents. The order stated the pupil was until the start of the second semester of the 1998-99 school year with allowance to attend summer school and the opportunity for early readmission at the beginning of the 1998-99 fall 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 require consideration. The parent alleged that the expulsion was harsh and disparate. 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 120.13(1)(c), Wis. Stats. *Joshua R. v. Edgerton School District*, Decision and Order No. 330 (July 29, 1997); *Troy*

*Y. v. Burlington School District Board of Education*, Decision and Order No 309 (January 21, 1997); *Jason M v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Tony R v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995). The issue of the evenness and fairness of disciplinary measures imposed by schools is an issue the State Superintendent is without authority to address. *Danielle W. v. Barron Area School District Board of Education*, Decision and Order No. 310 (January 1997); *Douglas S v. Neenah School District Board of Education*, Decision and Order No. 162 (May 23, 1989) and *Roy H. v. Blair School District Board of Education*, Decision and Order No. 159 (September 26, 1988).

In the subsequent appellate brief filed by the pupil's parent, the parent alleges that due process was violated because the notice of expulsion hearing did not advise Dale or his parents of the right to present witnesses or evidence and cross-examine witnesses. Sec. 120.13(1)(c), Stats., does not require that this be included in the notice. Furthermore, the procedural due process due a student facing expulsion or long term suspension is identified in *Goss v. Lopez*, 419 U. S. 565, 573-76, 95 S. Ct. 729, 735-737, 42 L.Ed. 2d 725 (1975). Due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial and the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding. *Linwood v. Board of Education*, 463 F.2d 763, 770 (7th Cir. 1972). After reviewing the tape of the hearing, it is apparent that Dale and his parents were advised at the hearing that they may present witnesses. In fact, Dale and his mother testified on the issue of factual basis for expulsion. His brother and mother testified on the behalf of Dale on the issue of punishment. At no time did the pupil or his parents request to present other witnesses or ask for a continuance to find witnesses.<sup>1</sup>

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<sup>1</sup> The pupil's mother attached statements from several people to her brief that did not testify at the hearing. The Superintendent generally will not consider evidence or information that was not provided to the board at the expulsion hearing. *Omar c. v. Whitewater School District Board of Education*, Decision and Order No. 258 (August

The brief also alleges that there was insufficient evidence to sustain an expulsion. The board heard evidence that Dale had 42 behavioral referrals between August 25, 1997 and March 24, 1998. Even if the board excluded the 7 instances of cutting individual classes, there remained 37 incidents of violation of school rules. These violations included, but not limited to, not showing up for detentions, disrupting class, fighting, swearing, wearing inappropriate clothing, and failing to obey school authority. 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). A reasonable view of the evidence sustains the board's 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.

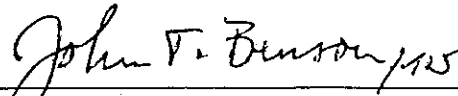
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11, 1995) and *Tony R. v. Lake Geneva Joint No 1 School District Board of Education*, Decision and Order No. 259 (August 11, 1995).

ORDER

IT IS THEREFORE ORDERED that the expulsion of Dale B. [REDACTED] by the Hortonville School District Board of Education is affirmed.

Dated this 9th day of June, 1998.



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John T. Benson  
State Superintendent of Public Instruction