

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Vadim S. [REDACTED] by the Madison Metropolitan School District Board of Education</p>	<p>DECISION AND ORDER 97/98-EX-29</p>
---	---

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 May 18, 1998 order of the Madison Metropolitan School District Board of Education to expel the above named pupil from the Madison Metropolitan School District until the beginning of second semester, 1998-99 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on June 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 expulsion 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 dated March 27, 1998 from the Madison Metropolitan School District informing Vadim and his parents that a hearing would be held on April 15, 1998 which could result in the pupil's expulsion from the Madison Metropolitan 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 and that he repeatedly refused or neglected to obey the rules of the school. The letter specifically alleged that Vadim possessed a weapon at school and shoved a security officer at school on March 20, 1998. A transcript of the hearing is also part of the record.

The hearing was held, before an independent hearing examiner, in closed session on April 15, 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 hearing examiner prepared a proposed decision and order. The hearing examiner found that 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 and that he repeatedly violated school rules. The hearing examiner further found that the interests of the school demand the student's expulsion. The hearing examiner recommended expulsion until the beginning of the second semester of the 1998-99 school year, with an opportunity to apply for early re-admission at the beginning of the first semester of the 1998-99 school year. The hearing examiner's order was mailed to the pupil and his parent on April 27, 1998. The school board considered the proposed order for expulsion on May 18, 1998. At that meeting,

the board affirmed the hearing examiner's recommendation, expelling Vadim until the beginning of the second semester of the 1998-99 school year. The board adopted all of the findings and orders of the hearing examiner with the following exceptions. It modified the proposed findings of fact by specifically finding that on March 20, 1998 Vadim did possess a weapon at school and that he did shove a security guard at school and that both of these acts endangered the health and safety of others. The board modified the proposed order by prohibiting early re-admission until the beginning of the second quarter of the 1998-99 school year. The board's order was mailed separately to the pupil and his parents.

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. The mother alleges that the length of the expulsion was unfair and too harsh. 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.

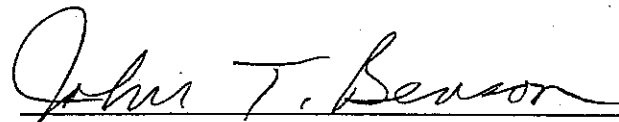
CONCLUSIONS OF LAW

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.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Vadim S. [REDACTED] by the Madison Metropolitan School District Board of Education is affirmed.

Dated this 29th day of July, 1998.



John T. Benson
State Superintendent of Public Instruction