

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of  Nick N [REDACTED]  by the Elcho School District Board of Education</p>	<p>DECISION AND ORDER 98/99 EX 02</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 September 14, 1998 order of the Elcho School District Board of Education to expel the above named pupil from the Elcho School District the first semester of the 1998-99 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on October 7, 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 August 26, 1998 from the district administrator of the Elcho School District. The letter advised that a hearing would be held on September 14, 1998, which could result in the pupil's expulsion from the Elcho School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil engaged in conduct while at school which endangered the property, of others, that he engaged in conduct while he was at school but not under the supervision of a school authority which endangered the property of others, and that he engaged in conduct which endangered the property of employees of the school district. The letter specifically alleged that Nick burglarized the Elcho School District Building and stole school district property from the building on July 11 and 12, 1998. Minutes of the school board expulsion hearing are also part of the record.

The hearing was held in closed session on September 14, 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 that the student "did such acts as breaking and entering the School District of Elcho building on multiple occasions as well as the theft of school district property on July 11 and 12, 1998." 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 September 14, 1998, was mailed separately to the pupil and his parents. The order stated the

pupil was expelled the first semester of the 1998-99 school year and that he was not allowed to participate in any or all school extra curricular activities for the second semester of the 1998-99 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 three issues which require consideration. The pupil's parents question the school board's authority to proceed prior to the conclusion of any court action and to impose a "conditional return" after the expulsion. The parents also allege that the punishment was too extreme. First, the school board is not required to delay action until other legal arenas have acted upon the same facts. *See John B. v. Milwaukee School District Board of Education*, Decision and Order No. 116 (October 31, 1983); *Steven S. v. Merrill Area School District*, Decision and Order No. 311 (February 7, 1997). Furthermore, there is no evidence in the record that the pupil or his parents requested any postponement of the hearing.

Secondly, the parents object to the "conditional return" it feels the school board imposed on Nick. The school board did not impose a "condition of return". It prohibited him from participating in extracurricular activities for the remainder of the school year.

"Wisconsin school boards may do all things reasonable to promote the cause of education, including establishing, providing and improving school district programs, functions and activities for the benefit of pupils, and including ... make rules for the organization, gradation and government of the schools of the school district, including rules pertaining to conduct and dress of pupils in order to maintain good decorum and a favorable academic atmosphere..." Sec. 120.13 (Intro) and 120.13(1)(a), Stats.

School board's have the authority and discretion to prohibit participation in extracurricular activities. *Anthony C. K. v. Amery School District Board of Education*, Decision and Order No. 155 (September 2, 1987). This prohibition is not a *de facto* expulsion and therefore not reviewable by the State Superintendent. *Anthony C. K. v. Amery School District Board of*

*Education*, Decision and Order No. 155 (September 2, 1987); *Jay S. v. Plymouth School District Board of Education*, Decision and Order No. 154 (August 25, 1987).

Thirdly, the parent alleges that the punishment, expulsion for the remainder of the first semester of the 1998-99 school year, is too extreme. 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).

However, I find that the Elcho School District Board of Education did not comply with all of the procedural requisites and therefore must overturn the school board's order. The "Notice of Expulsion Hearing" provided to Nick and his parents charged Nick with three grounds for expulsion based upon his burglary and theft of school district property. These three grounds are found in sec. 120.13(1)(c)1., Stats. Neither the "Findings of Fact and Expulsion Order" issued by the board on September 14, 1998 nor the minutes of the board meeting indicate which, if any, of these grounds were proven. The Board did find, as a fact, that Nick burglarized and stole school property, however the board did not find, as a conclusion of law, any statutory grounds authorizing expulsion. While this omission is a technical violation of statutory requirements, it requires reversal. *Benjamin L. v. Maple School District Board of Education*, Dec. and Order No. 214 (Dec. 21, 1993); *John K. v. Wisconsin Rapids School District*, Decision and Order No. 178

(May 17, 1991); *Michael S. v. Milwaukee Public School District*, Decision and Order No. 128 (May 10, 1985).

Nevertheless, it may be possible for the board, without completely rehearing the case, to correct this error. See decisions in *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 184 (February 7, 1992); *Nichole P. v. Crandon School District Board of Education*, Decision and Order No. 193 (May 29, 1992); and *Adam S. v. East Troy Community School District Board of Education*, Decision and Order No. 300 (August 9, 1996). The school board may reconvene and decide the issue of law. Specifically, the board must determine, as a matter of law, whether the facts regarding the burglary and theft lead to the legal conclusion that he engaged in conduct while at school which endangered the property, of others; that he engaged in conduct while he was at school but not under the supervision of a school authority which endangered the property of others; and/or that he engaged in conduct which endangered the property of employees of the school district.

I reverse this decision very reluctantly. However, I am bound to review expulsion decisions for compliance with statutory procedure. The conduct of the pupil was egregious and this decision in no way condones his conduct. But for the minor technical error of the school board, the decision would be upheld. The board retains the authority to correct its error and enter an order expelling the pupil in accordance with its previous determination.

In reviewing the record in this case I find the school district did not comply with all of the procedural requisites. I therefore reverse this expulsion.

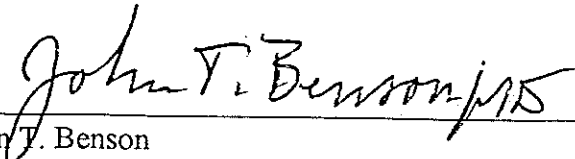
**CONCLUSIONS OF LAW**

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did not comply with all of the procedural requirements of sec. 120.13(1)(c), Wis. Stats.

**ORDER**

IT IS THEREFORE ORDERED that the expulsion of Nick N [REDACTED] by the Elcho School District Board of Education is reversed.

Dated this 4th day of December, 1998.

  
\_\_\_\_\_  
John T. Benson  
State Superintendent of Public Instruction