

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Stephanie O [REDACTED]

by the Waupaca School District
Board of Education

DECISION AND ORDER
98/99 EX-03

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 October 13, 1998 order of the Waupaca School District Board of Education to expel the above named pupil from the Waupaca School District for the 1998-99 school year, with an opportunity for early re-admission in the second semester of the 1998-99 school year. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on October 20, 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 September 29, 1998 from the district administrator of the Waupaca School District. The letter advised that a hearing would be held on October 6, 1998 which could result in the pupil's expulsion from the Waupaca School District. The letter was sent separately to the pupil and her parents by hand delivery 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 which endangered the property, health or safety of any employee or school board member of the district. The letter specifically alleged that Stephanie possessed marijuana on school grounds on September 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 October 6, 1998. The pupil and her mother appeared at the hearing without counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The pupil and her mother 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 and which endangered the property, health or safety of any employee or school board member of the district. 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 October 13,

1998, was mailed separately to the pupil and her parents. The order stated the pupil was expelled for the 1998-99 school year, with an opportunity for early re-admission in 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 two issues which require consideration. First, the mother alleges that the punishment, expulsion for the remainder of the 1998-99 school year was too harsh and inappropriate. 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. *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Troy Y v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997). The board did follow the statutory procedural requirements. Therefore, the school board's determination will not be disturbed.

The second issue raised by the mother concerns the manner in which the school policy was delivered to the students. The mother suggests that reviewing the school policy in homeroom rather than an all-school assembly would be more meaningful and effective. Because Stephanie was not found guilty of repeated rule violations, whether or not she received adequate notice of the rules is not an issue for this appeal. In general, I encourage parents to be involved in their child's education. Therefore, Ms. Osburn may want to make this recommendation to the school district or building principal.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

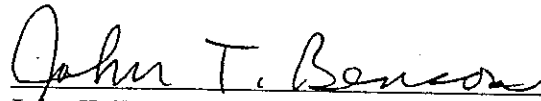
CONCLUSIONS OF LAW

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 Stephanie O [REDACTED] by the Waupaca School District Board of Education is affirmed.

Dated this 15th day of December, 1998.



John T. Benson
State Superintendent of Public Instruction