

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Julian H [REDACTED]

by the Milwaukee Public School District
Board of Education

DECISION AND ORDER
98/99 EX-08

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 order of the Milwaukee Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District until June 11, 1999. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on February 22, 1999.

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 12, 1999 from the district administrator of the Milwaukee Public School District. The letter advised

that a hearing would be held on January 26, 1999 could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parent by regular mail and messenger service. The letter alleged that the pupil engaged in conduct while at school or under the supervision of school authority that endangered the property, health, or safety of others. The letter specifically alleged that Julian possessed marijuana on school grounds on December 14, 1998. A transcript of the expulsion hearing is also part of the record.

The hearing was held before the independent hearing panel on January 26, 1999. The pupil and his parent appeared at the hearing without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and his parent were given the opportunity to present evidence, to cross-examine witnesses, and to respond to the allegations.

After the hearing, the independent hearing panel deliberated in closed session. The panel found that the pupil did engage in conduct while at school or while under the supervision of a school authority that endangered the property, health, or safety of others. The panel 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 independent hearing panel, dated January 26, 1999, was mailed separately to the pupil and his parent. The order stated the pupil was expelled until June 11, 1999. The Milwaukee School District Board of Directors met on February 24, 1999 and adopted the independent hearing panel's expulsion order. A letter regarding the board's adoption of the independent hearing panel's expulsion order was mailed separately to the pupil and his parent.

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 that may be the basis for an expulsion and sets out specific procedures that 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. In essence, the pupil's mother asks the State Superintendent to return Julian to the classroom, because Julian understands the seriousness of the offense. She also indicates that Julian now knows he must do better in school and to "never give in to drugs." The decision to expel a pupil and the 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). If a school board finds that the pupil engaged in conduct as alleged in the notice of expulsion; that conduct occurred while at school or while under the supervision of a school authority and it endangered the property, health, or safety of others; and that the interests of the school demand expulsion, the board may expel the pupil. In this case, the independent hearing panel and the board made the requisite findings, therefore, the expulsion must be affirmed.

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

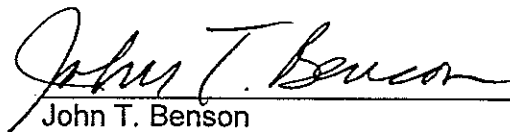
CONCLUSIONS OF LAW

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 Julian H. [REDACTED] by the Milwaukee Public School District Board of Education is affirmed.

Dated this 20th day of April, 1999.



John T. Benson
State Superintendent of Public Instruction