

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of John M. [REDACTED] by the Colfax School District Board of Education</p>	<p>DECISION AND ORDER 98/99 EX-13</p>
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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 February 2, 1999 order of the Colfax School District Board of Education to expel the above-named pupil, an eighth grader, from the Colfax School District until he reaches age 21. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on April 6, 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 20, 1999, from the Colfax Elementary School Principal. The letter advised that a hearing would be held on February 2, 1999, that could result in the pupil's expulsion from the Colfax School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and that he 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 the pupil engaged in 21 specified incidents of misconduct between December 2, 1997 and January 15, 1999. The misconduct included possessing a razorblade on the school bus; engaging in inappropriate and disruptive behaviors in class; inappropriate language, threats, and assaults on students; vandalizing school property; making sexual comments to a female student; engaging in inappropriate sexual behaviors; accessing pornography on the internet; and, on January 15, 1999, causing disruption and failing to obey direction during a field trip. Each incident resulted in various forms of discipline, including warning letters to his parents, detention, suspension, and police/law enforcement referrals. The minutes of the school board expulsion hearing were also included in the record.

The hearing was held in closed session on February 2, 1999. 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 did repeatedly neglect or refuse to obey school rules and that he 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 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 February 2, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until age 21.

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 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 which requires consideration. The pupil's father alleges that the expulsion was not fair. He alleges that during the January 15, 1999, incident John had actually been abused by one of the teachers. Therefore, the parent argues, it was unfair to expel John.

On January 15, 1999, the Middle School went to the Dunn County Jail as a field trip. While there, John was told to be quiet several times. He made comments under his breath, he called a teacher, Mr. Rudi, a name, and he swore at another student. As a result of his behavior, Mr. Rudi told John to remain within 5 feet of him so that he could keep an eye on him. Because the problems persisted, John was removed from the tour and told to wait in the lobby with another school staff member. When the students returned to the bus, John continued his misconduct. Mr. Rudi ordered John to sit in the front of the bus. John refused. Mr. Rudi told him he could either move on his own, or Mr. Rudi would physically move him. Again, John refused, saying, "If you move me, I'll smack you in the face." Mr. Rudi took hold of John, by his jacket, on the top of his shoulders. In the ensuing struggle, John hit his head on the ceiling of the bus. As Mr. Rudi attempted to move John down the aisle, John attempted to knee, swing at and kick Mr. Rudi. He also grabbed Mr. Rudi's sweater. Eventually, Mr. Rudi was assisted by another staff member, Mr. Yingst. The two adults were able to take hold of John's arms and legs to move him to the front of the bus. Meanwhile, students on the bus were cheering John. John

was removed from the bus and placed on the 7th grade bus to return to school. As he left the bus, he spit in Mr. Rudi's face and threatened to "sue you bastard."

At the expulsion hearing, John's father stated that John had been choked and grabbed by Mr. Rudi. He stated that John's head was slammed against the bus. Mr. Geissler, the principal who investigated the incident, testified that in the course of the investigation John did not report that he had been choked. He stated that John did admit to spitting at and kicking Mr. Rudi. He also admitted that he did not comply with the directive to move to the front of the bus. He stated that he did not move to the front of the bus because he wasn't told why he was to move.

The board is in the best position to judge credibility. See e.g. *State ex rel. DeLuca v. Common Council*, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976); *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 111 N.W. 2d 198 (1961). See also *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130 (May 10, 1985); *Nicole K. v. Janesville School District Board of Education*, Decision and Order No. 238 (September 16, 1994); *Tracy M. v. Random Lake School District Board of Education*, Decision and Order No. 244 (January 11, 1995). 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).

The school board was given information about the incident from both the administration's perspective and the pupil's perspective. After hearing the information, the board found that the conduct occurred as alleged, and that expulsion was necessary. The board

also found that the January 15 episode was one of 21 incidents of misconduct. A reasonable view of the evidence supports the board's findings; therefore, they will be upheld.

Regarding the fairness issue raised by the pupil, 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)

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

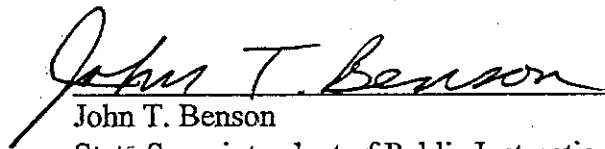
CONCLUSIONS OF LAW

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 John M. [REDACTED] by the Colfax School District Board of Education is affirmed.

Dated this 2nd day of June, 1999.


John T. Benson
State Superintendent of Public Instruction