

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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| <p>In the Matter of the Expulsion of</p> <p>Andrew C. [REDACTED]</p> <p>by the Milwaukee Public School District Board of Education</p> | <p>DECISION AND ORDER 98/99-EX-16</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 March 3, 1999 order of the Milwaukee Public School District Board of Education to expel the above-named pupil from the Milwaukee Public School District until January 25, 2000. This appeal was filed by the pupil's parent and was received by the Department of Public Instruction on April 15, 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 February 25, 1999, from the Student Service Coordinator of the Milwaukee Public School District. The letter advised that a hearing would be held on March 3, 1999 that could result in the pupil's expulsion from the Milwaukee Public School District. The letter was sent separately to the pupil and his parents 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 which endangered the property, health, or safety of others. The letter specifically alleged that Andrew possessed, with the intent to deliver, marijuana while at school on February 11, 1999. A transcript of the hearing is also part of the record.

The hearing was held in closed session on March 3, 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 independent hearing panel deliberated in closed session. The panel 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. 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 independent hearing panel, dated March 3, 1999 and adopted by the Board of School Directors on March 30, 1999, was mailed separately to the pupil and his parents. The order stated the pupil was expelled until January 25, 2000.

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) and 119.25, Wis. Stats., which establishes certain categories of offenses that 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 that requires consideration. The mother's appeal letter and subsequent correspondence argued that expulsion, and especially the period of expulsion, was too extreme. 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). 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 board made the requisite findings and followed the procedural mandates of sec. 120.13(1)(c) and 199.25(2), Stats. 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.

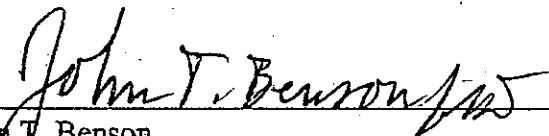
CONCLUSIONS OF LAW

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 Andrew C. [REDACTED] by the Milwaukee Public School District Board of Directors is affirmed.

Dated this 11th day of June, 1999.



John T. Benson
State Superintendent of Public Instruction