

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of James R [REDACTED] by the West Bend School District Board of Education</p>	<p>DECISION AND ORDER 98/99-EX-24</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 May 5, 1999, order of the West Bend School District Board of Education to expel James R [REDACTED], an 8th grade student at Badger Middle School, from the West Bend School District through the 1999-2000 school year. This appeal was filed by the pupil's parents and was received by the Department of Public Instruction on June 21, 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 April 23, 1999, from the district administrator of the West Bend School District. The letter advised that a hearing would be held on May 5, 1999, that could result in the pupil's expulsion from the West Bend School District. The letter was sent separately to the pupil and his parents by certified mail. The letter alleged that the pupil repeatedly refused and neglected to obey school rules between October 1996 and April 1999. However, the letter did not contain any particulars of the pupil's conduct that were going to be considered by the school board. An audiotape of the expulsion hearing is part of the record.

The hearing was held on May 5, 1999. The pupil and his parents appeared at the hearing without counsel. At the hearing, the school district administration presented a list of misconduct allegedly committed by the pupil. The list was a computerized printout of behavior referrals and the resulting action from each referral.

After the hearing, the school board deliberated. The board found the pupil repeatedly refused and neglected to obey school rules. The school board further found that the interests of the school demand the student's expulsion. The order for expulsion, dated May 5, 1999, did not contain any findings of fact. It was mailed to the pupil. The order stated the pupil was expelled through the 1999-2000 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 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 does not raise any specific issues that require consideration. However, upon appeal, it is my duty to review the record to ensure compliance with statutory requirements. There are at least three areas of non-compliance that compel me to reverse the expulsion order.

First, the notice of expulsion hearing did not contain the particulars of misconduct. It is well established that a student is entitled to due process at an expulsion hearing. *Goss v. Lopez*, 419 U.S. 565 (1975); *Racine Unified School District v. Thompson*, 107 Wis. 2d 657, 321 N.W.

2d 334 (1982). It is also well established that notice is an integral part of procedural due process in these situations. A student facing expulsion is entitled to timely and adequate notice of the charges against him so as to allow him a meaningful opportunity to be heard, even where the student unequivocally admits the conduct charged. *Keller v. Fochs*, 385 F. Supp. 262, 265 (E.D. Wis. 1974). Furthermore, sec. 120.13(1)(c)4., Stats., clearly requires specific notice of the misconduct alleged. Expulsions have been repeatedly overturned based upon this error. *Bradley Scott P. v. Menasha Joint School District Board of Education*, Decision and Order No. 197, (August 21, 1992); *Christopher K. v. West Allis School District Board of Education*, Decision and Order No. 166 (April 18, 1990); *Travis V. v. Waterloo School District Board of Education*, Decision and Order No. 144 (July 2, 1986). The notice of expulsion hearing in this case merely alleged that James repeatedly violated or neglected to obey school rules during a span of two and a half years. This does not constitute adequate notice.

Secondly, the expulsion order is insufficient. An expulsion order or record must indicate that the board found the pupil guilty of the alleged misconduct, that the conduct meets a statutory standard for expulsion and that the interests of the school demand expulsion. See *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994). In this case, the expulsion order merely repeated the statutory ground for expulsion and a statement that it is in the interest of the school to demand expulsion. While the hearing record contains information regarding the misconduct presented by the board, there is no indication of what conduct the board *found* that James engaged in to meet the statutory grounds for expulsion. This constitutes reversible error. See *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994).

Finally, there is no evidence in the record that the expulsion order was sent to the pupil's parents. Sec. 120.13(1)(c)3., Stats., requires that the order be mailed to the pupil, and if the pupil is a minor to the pupil's parent or guardian. Failure to comply with this statutory requirement also requires reversal. *Tyrell D. v. Racine Unified School District Board of Education*, Decision and Order No. 288 (May 14, 1996); *Robert K. v. Manitowoc Public School District Board of Education*, Decision and Order No. 230 (May 3, 1994); *Paul K. v. Flambeau School District Board of Education*, Decision and Order No. 171 (July 17, 1990).

In addition to the reversible errors, there were two other errors that cause me concern. First, the board failed to submit written minutes of the expulsion hearing. Sec. 120.13(1)(c)4.f., Stats., requires school boards to keep written minutes of expulsion hearings. I have previously overturned expulsions because the school board failed to provide adequate hearing minutes or an incomplete record. See *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996); *Douglas G. v. New London School District Board of Education*, Decision and Order No. 228 (April 29, 1994). Because an audiotape of the hearing was submitted, this omission is not necessarily fatal. However, I caution school boards against *relying* on audiotapes to memorialize an expulsion hearing. Quite often the tapes are indecipherable or portions of the tape are accidentally erased. If the board keeps detailed minutes of the hearing or transcribes the hearing, these problems are not fatal.

Secondly, the expulsion order that was sent to the pupil was accompanied by a cover letter that contained a serious misstatement of the law. The letter, addressed to James, stated that he had 60 days from the time of the Board's decision to appeal to the State Superintendent. There is no timeline within which appeals to the State Superintendent must be filed. This misstatement of law could leave some expelled pupils to think they are not entitled to file an

expulsion appeal after 60 days. While the board's statement in this case did not appear to have an adverse affect on James' appeal, it could have a chilling effect on other pupils who are expelled.

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.

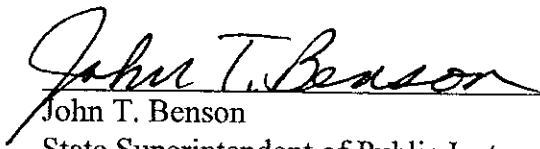
CONCLUSIONS OF LAW

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 James R. [REDACTED] by the West Bend School District Board of Education is reversed.

Dated this 17th day of August, 1999.



John T. Benson
State Superintendent of Public Instruction