

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>Travis S. ██████</p> <p>by the Spencer Public Schools School District Board of Education</p>	<p>DECISION AND ORDER 98/99 EX-30</p>
--	---

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 25, 1999 order of the Spencer Public Schools School District Board of Education to expel the above-named pupil from the Spencer Public Schools 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 July 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 May 19, 1999, from the principal of the Elementary and Junior High Schools of the Spencer Public Schools School District. The letter advised that a hearing would be held on May 24, 1999 that could result in the pupil's expulsion from the Spencer Public Schools School District. The letter was sent separately to the pupil and his parents by 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 that he repeatedly refused or neglected to obey school rules. The letter specifically alleged several specific instances of rule violations. The violations included that on April 29, 1999, he threatened to bring a gun to school and shoot several students. That same day, he told an eighth-grade girl he had a list of who he was going to shoot and that she was on the top of the list. The other allegations included several specific instances during the 1998-99 school year of causing disruption in class, being disrespectful to others, defying authority, and other misconduct. Minutes of the school board expulsion hearing and an audiotape of the expulsion hearing are also part of the record.

The hearing was held in closed session on May 24, 1999. The pupil and his parents appeared 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 engage in conduct while at school or while under the supervision of a school authority that endangered the property, health, or safety of others, and that he repeatedly refused or 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 containing the Findings of Fact and Conclusions of Law of the school board, dated May 25, 1999, was mailed separately to the pupil and his parents. 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 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.L.*, 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 parents allege that the punishment was too harsh. It has repeatedly been held that the decision to expel a pupil and 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.

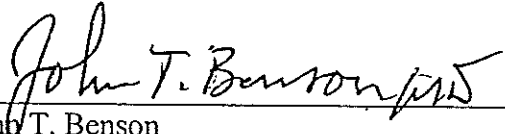
CONCLUSIONS OF LAW

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 Travis S█████ by the Spencer Public Schools School District Board of Education is affirmed.

Dated this 13th day of September, 1999.



John T. Benson
State Superintendent of Public Instruction