

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

John L

by Greenfield School District
Board of Education

DECISION AND ORDER

Appeal No.: 99/00 EX 17

NATURE OF THE APPEAL

This is an appeal to the State Superintendent of Public Instruction pursuant to Wis. Stats. § 120.13(1)(c) from the order of the Greenfield School District Board of Education to expel the above-named eleventh-grade pupil from the Greenfield School District. This appeal was filed by the pupil and received by the Department of Public Instruction on May 3, 2000.

In accordance with the provisions of Wis. Adm. Code § PI 1.04(5), 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 § 120.13(1)(c). 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 March 6, 2000, from the assistant superintendent of the Greenfield School District. The letter advised that a hearing would be held on March 13, 2000 that could result in the pupil's expulsion from the

Greenfield School District through the pupil's 21st birthday. The letter was sent separately to the pupil and his parents by regular mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules. The letter alleged 14 specific instances where John had refused or neglected to obey school rules including but not limited to breaking four exterior glass doors in the school cafeteria, several refusals to serve detentions, disrupting classes, and refusing to do class work. The letter also noted there had been numerous other instances of John's refusal or neglect to obey school rules during the previous school year. Minutes of the school board expulsion hearing, an audiotape of the expulsion hearing, and copies of various documents submitted by the administration during the hearing are part of the record.¹

The hearing was held in closed session on March 13, 2000. The pupil and his parents appeared at the hearing with their counsel, Robert Pledell. 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 refuse or neglect 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 March 13, 2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the 2000-2001 school year.

¹ The minutes submitted appear to be a sanitized version that is appropriate for publication and are insufficient to allow a meaningful review. The record must reflect who was present at the hearing, what evidence was presented in support of allegations of misconduct, and what decision or action the board took based upon the evidence presented. However, there was an audiotape made of the hearing that forms a record for a meaningful review. I caution school districts against relying solely on audiotape recordings. Such recordings are frequently inaudible and are useless in determining what occurred at the hearing.

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 § 120.13(1)(c), 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 § 120.13(1)(c). 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 challenges the severity of the punishment. The pupil's mother requests that the state superintendent review the expulsion because John now wants to complete his education. She alleges that John is not able to attend an alternative education program due to the duration of this expulsion. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, sec.3, the state

superintendent has consistently declined to modify the length of expulsions. *Troy Y. v. Burlington School District Board of Education*, Decision and Order No. 309 (January 21, 1997); *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 294 (June 24, 1996); *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993). The school board is in the best position to judge the demeanor of witnesses as well as to know and understand what its community requires as a response to school misconduct. It would be inappropriate for me, absent an extraordinary circumstance or a violation of procedural requirements, to second-guess the appropriateness of a school board's determination. In reviewing this case, I do not see an extraordinary circumstance or procedural violation that causes me to modify the pupil's expulsion period.

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

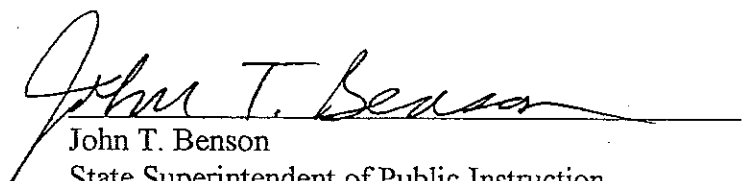
CONCLUSIONS OF LAW

Based upon my review of the record in this case and the findings set out above, I conclude that the school board did comply with all of the procedural requirements of § 120.13(1)(c).

ORDER

IT IS THEREFORE ORDERED that the expulsion of John La by the Greenfield School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on 6/26/00, 2000.


John T. Benson
State Superintendent of Public Instruction