

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of</p> <p>David D</p> <p>by Central High School District of Westosha Board of Education</p>	<p>DECISION AND ORDER</p> <p>Appeal No.: 00/01 EX 03</p>
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**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 Central High School District of Westosha Board of Education to expel the above-named pupil from Central High School. This appeal was filed by the pupil and received by the Department of Public Instruction on November 27, 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 November 15, 2000, from the district administrator of the Central High School District of Westosha. The letter advised a hearing would be held November 21, 2000 that could result in the pupil's expulsion from Central High School. The letter was sent separately to the pupil and his parents. The letter alleged 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 also alleged David neglected to obey the rules established by the school board. The letter specifically alleged that on Friday, November 10, 2000, David possessed a pill, razor blade, and drug devices at school. It also alleged David was tardy to school on two specified occasions and was referred to the office for classroom behavior on two occasions.

Minutes of the school board expulsion hearing are part of the record.

The hearing was held November 21, 2000. 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 engage in conduct while at school or while under the supervision of a school authority which endangered the property, health, or safety of others, and he refused or neglected to obey school rules<sup>1</sup>. 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 November 21,

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<sup>1</sup> I remind school districts that if a district intends to rely upon the provision in the statute allowing expulsion for violation of school rules, the district must allege in its notice of expulsion hearing **and** the board must find that the pupil engaged in **repeated violation of school rules**. The notice and order in this case do not contain this language. However, because the expulsion was also based on conduct that endangered the health, safety, and welfare of others, the board's reliance on simple refusal or neglect to follow school rules does not affect the outcome of this appeal.

2000, was mailed separately to the pupil and his parents. The order stated the pupil was expelled through the first semester of the 2000-01 school year.<sup>2</sup>

## 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 alleges expulsion was too harsh a penalty for David's behavior. Since the authority to "approve, reverse or modify the decision" was conferred upon the state superintendent by 1987 Wis. Act 88, § 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.

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<sup>2</sup> In the cover letter addressed to David and his father, the district administrator informed David he could return to school at the beginning of the second semester (January 22, 2001) only if he provided a negative drug test. This requirement is not in the board's order. In fact, the board's expulsion order terminated at the conclusion of the first semester, depriving the school administration of any authority to require or enforce conditions upon David's return.

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 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 the 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 complied with all of the procedural requisites. I, therefore, affirm this expulsion.

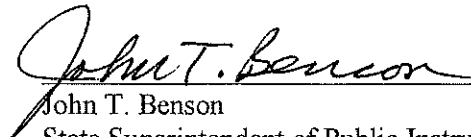
#### CONCLUSIONS OF LAW

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 §120.13(1)(c).

#### ORDER

IT IS THEREFORE ORDERED that the expulsion of David D. [redacted] by the Central High School District of Westosha Board of Education is affirmed.

Dated at Madison, Wisconsin, on January 25, 2001.

  
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John T. Benson  
State Superintendent of Public Instruction

Parties to this appeal are:

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### **APPEAL RIGHTS**

Wis. Stats. § 120.13(1)(c) specifies that an appeal from this Decision and Order may be taken within 30 days to the circuit court of the county in which the school is located. Strict compliance with the service provisions of § 227.53 is required. In any such appeal, the State Superintendent of Public Instruction shall be named as respondent.

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