

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

Dona B.

by Superior School District
Board of Education

DECISION AND ORDER

Appeal No.: 00/01 EX 07

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 Superior School District Board of Education to expel the above-named ninth-grade pupil from the Superior School District. This appeal was filed by the pupil and received by the Department of Public Instruction on March 14, 2001.

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 December 22, 2000, from the district administrator of the Superior School District. The letter advised a hearing

would be held January 8, 2001 that could result in the pupil's expulsion from the Superior School District through until her 21st birthday. The letter was sent separately to the pupil and her parents by personal service and by certified mail. The letter alleged that the pupil repeatedly refused or neglected to obey school rules and 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 Dona received numerous disciplinary referrals between August 29 and December 13, 2000 for conduct including but not limited to skipping classes; excessive talking, speaking, or acting disrespectfully to staff or other adults; and acting disruptively in class. Dona signed a pre-expulsion agreement on December 12 and violated the terms of the agreement within 30 minutes of signing it. She has an extensive history of discipline referrals of a similar pattern. A transcript of the hearing and copies of documents entered into evidence form the record.¹

The hearing was held in closed session on January 8, 2001. The pupil and her father appeared without counsel. At the hearing, the school district administration presented evidence concerning the grounds for expulsion. The pupil and her father 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 repeatedly refused or neglected to obey school rules, and she engaged in conduct while at school or while under the supervision of a school authority which endangered the property,

¹ The board did not submit a copy of the minutes of the expulsion hearing. Wis. Stats. § 120.13(1)(c)3 requires boards to keep written minutes of the hearing. 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. In this case, the board submitted a transcript of an audiotape taken at the hearing. Despite some problems with the transcription of the tape, there is a sufficient record for a meaningful review. I have cautioned school boards against relying on audiotapes. Expulsions have been overturned where the record was insufficient. *Nathan W. v. Wilmot Union High School District Board of Education*, Decision and Order No. 296 (July 10, 1996).

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 the school board, dated January 8, 2001, was mailed separately to the pupil and her parents. The order stated the pupil was expelled permanently.

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 letter² in this case alleges the term of the expulsion was cruel and excessive.³ The mother describes many serious and unfortunate events in Dona's life a few months before her expulsion from school in support of this allegation.

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. *David D. v. Central High School District of Westosha Board of Education*, Decision and Order No. 429 (January 25, 2001); *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). These events were brought to the board's attention by the father during the expulsion hearing. The board stated they would review the situation if the information was provided with Dona's medical records, and there was a cause and effect between the events and her behavior. 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 the extraordinary circumstance or procedural violation that cause 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.

² The board alleges the mother's appeal letter does not *legally* constitute an appeal, because it is not signed. While the document is not signed in *cursive*, it is a handwritten appeal by the pupil's mother. The board's allegation is, therefore, dismissed and the letter is accepted as a valid appeal.

³ The mother raised other concerns about compulsory attendance and alternative education. Those concerns were addressed in a separate letter from the Department of Public Instruction, Office of Legal Services.

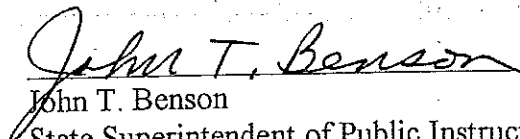
CONCLUSIONS OF LAW

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 Dona B. by the Superior School District Board of Education is affirmed.

Dated at Madison, Wisconsin, on May 9, 2001.



John T. Benson
State Superintendent of Public Instruction

Parties to this appeal are:

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