

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of
MICHAEL E [REDACTED]

by the Oconomowoc Area School
District Board of Education

DECISION
AND
ORDER
93-EX-10

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 order of the Oconomowoc Area School District Board of Education expelling Michael E [REDACTED] from the Oconomowoc Area School District from on or about May 27, 1993 through the remainder of the 1992-93 school year and the first semester of the 1993-94 school year. This appeal was filed by Attorney R. Stan Nelson on behalf of Michael, dated September 24, 1993, and was received by the Department of Public Instruction on October 4, 1993.

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 interests of the school district demand that the student be expelled.

FINDINGS OF FACT

The record contains a letter dated May 19, 1993, from the Oconomowoc Area School District administration which was sent to Michael and separately to his mother. The letter advised that a hearing would be held on May 27, 1993, which could result in Michael's expulsion. The letter referenced an incident on May 10 1993, alleging Michael fired a dangerous weapon, a BB gun, in the direction of the track team during practice at the high school track. The letter indicated that at hearing Michael could be represented by counsel, present witnesses and evidence in his own behalf, and the parties could request a closed hearing.

The hearing was conducted in closed session on May 27, 1993, where Michael and his mother appeared with Attorney Nelson. They were accompanied by one eighth grade girl who testified on Michael's behalf. At the hearing the school district administration presented testimony and documents supporting the alleged misconduct by the pupil. Michael, his mother, and other representatives were given an opportunity to question and to respond to the administration's assertions.

After the hearing, the school board deliberated in closed session and returned with its decision to expel Michael. An Order of Expulsion was subsequently entered on June 7, 1993, and was sent to Michael and to his mother. In reaching its decision, the school board found that Michael, while off school premises, had engaged in conduct

which endangered the property, health, and safety of others on school property by shooting an air-powered BB gun at members of the middle school track team. Finally, the school board found that the interests of the school demanded the pupil's expulsion.

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 Dist., 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 which 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 Dist. 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. 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.

In reviewing the record in this case I find that the Oconomowoc School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

Initially the parties requested briefing in this matter but later that request was withdrawn. The appeal letter dated September 24, 1993, suggests "not a single witness was produced which directly implicated Michael" in the prohibited conduct. It argues that the written statements from members of the track team were insufficient and that the other evidence was generally "unreliable."

The district's investigation included the taking of 10 hand-written statements from track team members which referred to seeing Michael holding a BB gun, naming another boy T.B. and giving descriptions of clothing of three persons all together, hearing shots, hearing BBs fly past, hearing the pump of a BB gun, and hearing BBs "ping" off the goal posts or score board. It is not questioned whether Michael was present with a BB gun in his hand when confronted by the assistant track coach, Matt Snyder, across the school fence adjacent to the high school track where the middle school team was practicing shortly after these observations. While an issue is raised by Attorney Nelson as to whether any team members actually were able to identify Michael as a shooter of BBs in the direction of the team, there is evidence that there were two BB guns and three boys in the immediate area from which the BBs came. This evidence was provided through four written statements given by "student # 11," the eleventh student from whom witness statements were taken by the school. This boy, T.B., did not testify, but in his statements he identifies himself as one of the two other boys accompanying Michael. In

his statements he denies shooting at the team indicating he only sighted toward them, then handed the gun to Michael who shot at the team about three times. The statements indicate a third student, H.H. had a second gun, but the statements are arguably inconsistent in that one states H.H. shot about three times at the team while others state the witness was not in a position to see H.H. shoot.

Michael's testimony was quite different. He testified that he did not shoot the gun or guns, he heard only one shot, he saw no one shoot at the team, he did not pump the gun, he picked up the one gun to return it to the garage, and he did not tell Mr. Snyder the gun was jammed but someone else did. He also denied hearing any statements referred to by T.B. about wanting to shoot at the track team.

Michael's mother testified as to Michael's denial statements to her as well as her conversations with T.B. and H.H. which tended to implicate them but not Michael.

Hearsay testimony is admissible and subpoenas are available in expulsion hearings, where the burden of proof is not as stringent as in criminal or juvenile delinquency proceedings, Racine Unified School District, supra. The evidence here is not solely hearsay. Much of the hearsay from team members is corroborated by the statements of T.B., a participant. The evidence is both direct and circumstantial. Circumstantial evidence can be as strong as direct evidence. One issue was credibility. Credibility is an issue usually left to the exclusive arena of the fact finder, here, the school district, and does not fall into that procedural category over which the State Superintendent generally exercises review authority. I find no basis in this record not to apply these general principles.

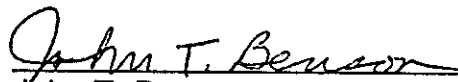
CONCLUSIONS OF LAW

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 Michael E. [REDACTED] by the Oconomowoc School District Board of Education is affirmed.

Dated this 3rd day of December, 1993.



John T. Benson
State Superintendent of Public Instruction