

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

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In the Matter of the Expulsion of  
RAMIRO L [REDACTED]

by the Westfield School  
District Board of Education

DECISION  
AND  
ORDER  
93-EX-15

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**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 Westfield School District Board of Education expelling Ramiro L [REDACTED] from the Westfield School District from on or about November 17, 1993 until the start of the 1994-1995 school year. This appeal dated November 30, 1993, was filed by Attorney Robert P. Rudolph on behalf of Ramiro and was received by the Department of Public Instruction on December 1, 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 November 12, 1993, from the Westfield School District administration which was sent to Ramiro and separately to his parents. The letter advised that a hearing would be held on November 17, 1993, which could result in Ramiro's expulsion. The letter referenced an incident on November 10, 1993, alleging Ramiro possessed a knife "at school" and also "outside the school" in violation of School Board Policy #5044. The policy was attached to the letter and prohibited the possession of "a dangerous weapon" defined as "any object that by its design and/or use can cause bodily injury or property damage." It refers to possessing a dangerous weapon "on school property, on school buses, or at any school related event." A copy of the expulsion statute was also included. The letter further indicated that at hearing Ramiro could be represented by counsel, and he could request an open or closed hearing.

The school board minutes (there is no transcript or tape) reflect the hearing was conducted in closed session on November 17, 1993, where Ramiro and his parents appeared with Attorney Rudolph. At the hearing the school district administration presented evidence from Principal Swenson who indicated that in the prior week including November 10, there had been "group confrontations" at the high school and he had requested police patrol of the high school area. He then read a report submitted by Officer Scott Johnston which said Officer Johnston had been watching the high school area on the 10th and through binoculars saw Ramiro with a knife in his possession "in the high school area." When Officer Johnston was able to confront and search Ramiro, Ramiro said "you did not see a knife." The search did not turn up a knife. The incident

was reported to Mr. Swenson. Officer Johnston was present and confirmed the report. Detective Thomas Schrank stated that another juvenile was involved and the knife had been retrieved from that juvenile's residence. The knife was displayed for the board.

District Administrator Shay discussed the dangerous weapons policy in the student handbook and indicated Ramiro had stated he had received a copy.

On questioning from Attorney Rudolph it was brought out that when Officer Johnston had seen a knife in Ramiro's hands through his binoculars, Johnston then drove his police car to where Ramiro was with another student. The students were requested to stop but one was able to flee the scene while Ramiro was not. Detective Schrank stated that through follow up investigation an informant stated the knife was passed to Ramiro during class at the Tech. Ed. Building.

The minutes do not reflect that Ramiro or anyone on his behalf testified. After the hearing, the school board deliberated in closed session and returned with its decision to expel Ramiro. An Order of Expulsion was entered on November 17, 1993, and was sent to Ramiro and to his parents. In reaching its decision, the school board found that Ramiro while at school or while under the supervision of a school authority had engaged in conduct which endangered the property, health, and safety of others. 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 Westfield School District complied with all of the procedural requisites in this matter. I am, therefore compelled to affirm the expulsion decision as entered.

There has been no briefing. The appeal letter suggests the expulsion should be reversed because "the incident did not happen on school grounds." While it is true the record in this case is sparse, the district does not appear to have been represented by counsel and the minutes indicate the evidence may have been presented in a more

orderly and thorough fashion, I find there was sufficient evidence upon which the board could base a finding that Ramiro possessed the knife on school property.

Hearsay testimony is admissible in expulsion hearings, where the burden of proof is not as stringent as in criminal or juvenile delinquency proceedings, Racine Unified School District, supra. In Kathleen W. v. Tri-County Area School Board, Decision and Order No. 130, May 10, 1985, p. 9, the State Superintendent upheld a board determination that evidence of sexual intercourse based exclusively on hearsay testimony of school officials who recited statements of student witnesses whose names the district refused to reveal was sufficient. Based on this precedent I find that the hearsay statement of Detective Schrank that his follow-up investigation produced an informant who stated the knife was passed to Ramiro during class at the Tech. Ed. Building is sufficient evidence on which the board could determine Ramiro possessed the knife at school.

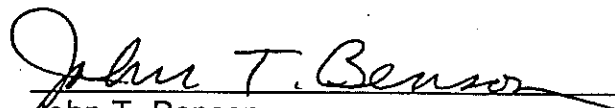
#### CONCLUSIONS OF LAW

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 Ramiro L. [REDACTED] by the Westfield District Board of Education is affirmed.

Dated this 31<sup>st</sup> day of January, 1994.

  
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John T. Benson  
State Superintendent of Public Instruction