

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

BRADLEY ██████████

by the Tri-County Area School District
Board of EducationDECISION
AND
ORDER94/95-EX-1

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 September 26, 1994 order of the Tri-County Area School District Board of Education to expel Bradley F. ██████████ from Tri-County Area School District until June 2, 1995. This appeal, dated September 30, 1994, was filed by Bradley's attorney, James M. Klein, and was received by the Department of Public Instruction on October 3, 1994.

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 entitled "Notice of Pupil Expulsion Hearing" dated September 19, 1994 from the District Administrator of the Tri-County Area School District. The letter advised that a hearing would be held on September 26, 1994 concerning the expulsion of Bradley F. [REDACTED] from the Tri-County Area School District. The letter was sent separately to Bradley and his parents by regular and certified mail. The letter alleged that Bradley engaged in conduct while at school or while under the supervision of a school authority which endangered the property, health or safety of others. The letter specifically alleged Bradley concealed a knife in a school locker with the intent to harm another student. A current copy of sec. 120.13(1)(c), Stats., was printed on the back of the letter. A copy of two school board policies on weapons was also attached to the letter. The record also contains the disciplinary report for the conduct dated September 16, 1994. Minutes of the school board expulsion hearing and an audio tape of the expulsion hearing are also part of the record.

The hearing was held in closed session on September 26, 1994. Bradley and his parents appeared at the hearing. They were not represented by counsel. At the hearing the school district administration presented evidence concerning the grounds for expulsion. The school district amended the specific conduct allegation. The notice of hearing originally alleged Bradley concealed a knife in a school locker. At the hearing, the administration alleged he concealed the knife on his person. Bradley and his parents were given the opportunity to present evidence, to cross examine the witnesses and to respond to the allegations. The school board policies concerning weapons in school were also admitted into the record.

After the hearing, the school board deliberated in closed session. The board found Bradley 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. 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 September 26, 1994, was mailed separately to Bradley and his parents. The order stated Bradley was expelled until June 2, 1995.

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.

The appeal letter in this case raises two issues. First, Bradley argues that in a rural school a single blade hunting knife should not be considered a dangerous weapon in violation of the school policy. The school policy does not permit dangerous weapons on school property unless approved by a school official or a state or federal law. The school board policy definition of "dangerous weapon" includes a knife. School board policy does not except certain types of knives from the definition. This is a matter clearly within the discretion of the school board. Bradley's conduct violated a specific school board policy concerning dangerous weapons. Possession of a knife on school property has been held to be a sufficient basis for expulsion. *Jason S. v. Kenosha Unified School District No. 1 Board of Education*, Decision and Order No. 205 (December 19, 1993); *Ramiro L. v. Westfield School District Board of Education*, Decision and Order No. 217 (January 31, 1994).

Second, Bradley argues there was no credible evidence before the school board to indicate he intended to harm another student. The school board found that Bradley violated a school board policy concerning possession of a knife and that he concealed the knife on his person. The school board made no findings that Bradley intended to harm anyone. The school board concluded that there were grounds to expel Bradley and the interest of the school demanded his expulsion. Because the school board made no finding with respect to an intent to harm another student it is unnecessary to consider this issue further.


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 Bradley F. [REDACTED] by the Tri-County Area School District Board of Education is affirmed.

Dated this 30th day of November, 1994.



John T. Benson
State Superintendent of Public Instruction