

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

<p>In the Matter of the Expulsion of Nicholas I [REDACTED] by the Lodi School District Board of Education</p>	<p>DECISION AND ORDER 95/96-EX-41</p>
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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 July 30, 1996 order of the Lodi School District Board of Education to expel Nicholas E [REDACTED] from the Lodi School District for the 1996-97 school year. This appeal was filed by Lauri Roman, attorney for the pupil and his parents, and was received by the Department of Public Instruction on August 20, 1996.

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 interest of the school district demands that the student be expelled.

FINDINGS OF FACT

The record contains a "Notice of Pupil Expulsion Hearing" dated July 3, 1996 from the district administrator of the Lodi School District. The notice advised that a hearing would be held on July 15, 1996 which could result in the pupil's expulsion from the Lodi School District. The notice was sent separately to the pupil and his parents by certified mail. The notice alleged that the pupil is guilty of repeated refusal or neglect to obey school rules, that he knowingly conveyed or caused to be conveyed a threat or false information concerning an attempt or alleged attempt to destroy school property by explosives and that he engaged in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others. The notice specifically alleged that the pupil engaged in the following nine incidents of misconduct:

1. On February 28, 1996, (pupil) violated school rules by fighting with a classmate in art class.
2. On April 10, 1996, (pupil) verbally harassed a female classmate and caused bodily harm to said female classmate by pushing her into an open band room door and open locker doors, causing bruises to her legs and body.
3. On May 1, 1996, (pupil) hit a fellow student on the side of the head with a bookbag loaded with books and other objects causing bodily harm to the student.
4. On May 6, 1996, (pupil) threatened to do bodily harm to two middle school teachers by writing a note during a classroom writing assignment which stated "...when I will be happiest is when (teacher) dies and (teacher). I will kill them, that's a promise..."

5. On May 9, 1996, (pupil) used profane language by saying "fuck you" to a female classmate in one of his classes.
6. On May 20, 1996, (pupil) showed disrespect to a teacher by demanding that the teacher "listen while I talk" and then presenting a list of grievances to the teacher.
7. On May 28, 1996, (pupil) verbally harassed and threatened a fellow student by telling the student that pupil would bomb him, gun him down and knife him.
8. On May 29, 1996, in the presence of an educational assistant on the Middle School playground, (pupil) threatened to do bodily harm to a classmate and got into a fight with another student later that day.
9. On May 31, 1996, (pupil) knowingly conveyed to classmates a threat that he had explosives and was going to kill a student and teacher at the Lodi Middle School.

The hearing was held in closed session on July 15 and continued on July 18, 1996. The pupil and his parents appeared at the hearing with 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 that 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 that he also repeatedly violated school rules. Specifically, the board found that the pupil engaged in six of the nine incidents of misconduct contained in the Notice of Pupil Expulsion Hearing. The board did not make findings

on the allegations of misconduct numbered 4, 6 and 9, above, which included writing a threatening note involving teachers, showing disrespect by demanding that a teacher "listen while the pupil talked", and making a bomb threat on May 31, 1996. The school board further found that the interests of the school demand the pupil's expulsion. The board's Findings and Order of Pupil Expulsion dated July 30, 1996, was mailed separately to pupil and his parents. The order stated the pupil was expelled for the of the 1996-97 school year.

The record also contains minutes of the school board expulsion hearing, audio tapes of the expulsion hearing and exhibits offered by both parties. Both parties have submitted briefs in this matter as well.

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 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 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 pupil, through his attorney, raises two issues in this appeal. First, he argues that the findings of misconduct are an insufficient and unreasonable basis for concluding that the interests of the school demand expulsion. Second, he argues that one board member was biased against the pupil and unfairly tainted the entire proceeding.

With regard to the first issue, the pupil basically argues that the board's findings of misconduct cannot reasonably support the separate, required finding that the interests of the school demands expulsion. He argues that the school administration had not considered expulsion prior to the "bomb threat" incident, one of the allegations upon which the board made no findings, and that the incidents of misconduct which the board found to have occurred did not justify expulsion because the pupil was reacting to a pattern of taunting and harassment from peers.

In this case, the board held a lengthy hearing in which the pupil, through his attorney, had the opportunity to fully inform the board of the circumstances of each alleged incident of misconduct. After receiving extensive testimony and exhibits, the board deliberated and specifically found that the pupil engaged in six incidents of misconduct. The board went on to specifically find that the interests of the school demand expulsion.

If there is a reasonable view of the evidence which supports the board's findings, those findings will be upheld. *Kathleen W. v. Tri-County Area School District Board of Education*, Decision and Order No. 130, (May 10, 1985); *Kristen J.P. v. Mukwonago Area School District Board of Education*, Decision and Order No. 185, (Feb. 21, 1992); *Rhiannon V. Muskego-Norway School District Board of Education*, Decision and Order No. 188, (April 21, 1992); *Nathan W. v. Wilmot Union High School Board of Education*, Decision and Order No. 296, July 10, 1996. I have previously held, as have my predecessors, that the State Superintendent will not review the severity of discipline imposed absent unusual circumstances. The decision to expel a pupil and a determination of the length of the expulsion are both within the discretion of the school board as long as the board complies with the procedural requirements set out at 120.13 (1)(c), Wis. Stats. *Tony R. v. Lake Geneva Joint No. 1 School District Board of Education*, Decision and Order No. 259, (August 11, 1995); *Jason M. v. West Allis-West Milwaukee School District Board of Education*, Decision and Order No. 294, (June 24, 1996).

The pupil, through his attorney, basically asks me to substitute my judgement for the judgement exercised by the board. He asks me to find that his repeated incidents of misconduct did not warrant expulsion and therefore could not support a finding that the interests of the school demand expulsion. I find, however, that the board's conclusions are supported by a reasonable view of the evidence. Further, I will not substitute my judgement for the board's judgement with regard to whether the particular conduct in this case warrants expulsion.

The pupil, through his attorney, next argues that one board member was biased against the pupil and "tainted the entire process". The pupil alleges that this board member's child was among those students guilty of harassing the expelled pupil. The board member's child was

included on a list of those children prepared by counsel for the pupil and submitted in his behalf on the first day of hearing. Parenthetically, the board member and his child have the same surname, so it is likely that the pupil was aware of at least a potential familial relationship between the board member and one of the children included on his list. The pupil, however, did not object to the board member's participation at the hearing. The pupil argues for the first time on appeal that the board member was biased based on statements made by the board member during the second day of hearing.

The law presumes that school board members, as public officials, will discharge their legal duties in accordance with the authority conferred upon them and that they will act fairly, impartially and in good faith. See *Heine v. Chiropractic Examining Board*, 167 Wis. 2d 187 (Ct. App., 1992), (*petition for review denied*), citing *State ex rel. Wasilewski v. Board of School Directors*, 14 Wis. 2d 243, 266 (1961), *appeal dismissed and cert. denied*, 370 U.S. 720 (1962). In *Robert M. v. Kiel School District Board of Education*, Decision and Order No. 149, (April 30, 1987), the fact that a board member was distantly related to the expelled pupil was insufficient to show bias.

Likewise, in this case I find the pupil's assertion of bias insufficient to overcome the presumption that school board members act fairly, impartially and in good faith. The record contains no evidence of actual bias, nor does it reflect circumstances which would lead to a high probability of bias. See *Kathleen W. by the Tri-County Area Board of Education*, Decision and Order No. 130, (May 10, 1985). The list of children's names prepared by counsel for the pupil was not a focus of attention at the hearing. The board member's child was certainly not a focus of attention. Inclusion of his name on the list was tangential to the case at most. Had inclusion

of the board member's child on the list been likely to lead to a high probability of bias, counsel for the pupil could reasonably have objected to that board member's participation. The fact that she did not object suggests that inclusion of the child's name on the list did *not* create a high probability of bias. Nor do I find statements made by the board member probative of bias. The board member's statements do not reflect any opinion about the merits of the case or prove a predisposition against the pupil. Finding bias on this record would be based upon little more than speculation.

In reviewing the record in this case I find the school district complied with all of the procedural requisites. I therefore affirm this expulsion.

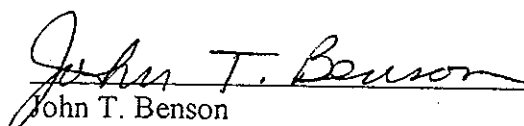
CONCLUSIONS OF LAW

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 sec. 120.13(1)(c), Wis. Stats.

ORDER

IT IS THEREFORE ORDERED that the expulsion of Nicholas E. [REDACTED] by the Lodi School District Board of Education is affirmed.

Dated this 17th day of October, 1996.



John T. Benson
State Superintendent of Public Instruction