

THE STATE OF WISCONSIN

BEFORE

THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the Matter of the Expulsion of

NICHOLAS K [REDACTED]

by the Hudson School District
Board of Education

DECISION AND ORDER
96/97-EX-02

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 4, 1996 order of the Hudson School District Board of Education to expel Nicholas, a tenth grade student, from the Hudson School District until October 11, 2001. This appeal, dated October 4, 1996, was filed by Nicholas' attorney, and was received by the Department of Public Instruction on October 9, 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 letter entitled "Notice of Pupil Expulsion Hearing" dated August 28, 1996 from the District Administrator of the Hudson School District. The letter advised that a hearing would be held on September 4, 1996 concerning the expulsion of Nicholas from the Hudson School District. The letter was sent separately to Nicholas and his parents by regular and certified mail. The letter alleged that Nicholas engaged in conduct while at school which endangered the property, health or safety of others at school. The letter specifically alleged that on September 13, 1994 Nicholas was in possession of a firearm on school premises. A current copy of sec. 120.13(1)(c), Stats., accompanied the letter. Minutes of the school board expulsion hearing, audio tapes of the expulsion hearing and numerous exhibits presented at the expulsion hearing are also part of the record.

The hearing was held in closed session on September 4, 1996. Nicholas and his parents appeared at the hearing with counsel, Attorney James Bartholomew. At the hearing the school district administration presented evidence concerning the grounds for expulsion. Nicholas and his parents were given the opportunity to present evidence, to cross examine all witnesses and to respond to the allegations.

After the hearing, the school board deliberated in closed session. The board found that Nicholas 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 Order of the school board, dated September 4, 1996, was

mailed separately to Nicholas and his parents. The order stated Nicholas was expelled until October 11, 2001.

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 school district argues that I should dismiss this appeal for a lack of jurisdiction because Nicholas' appeal did not literally comply with sec. PI 1.03(1), Wis. Adm. Code which states:

All complaints and appeals shall be filed in writing specifying the grounds upon which the action is brought, the facts and any relief sought.

However, with respect to expulsion appeals, the State Superintendent has not required strict compliance with sec. PI 1.03, Wis. Adm. Code.

Nicholas' brief raises several issues which require consideration. First, Nicholas argues that his due process rights were violated when the school district failed to provide him with the names of the student witnesses prior to the expulsion hearing. Nicholas alleges that the district's failure to identify the student-witnesses prior to the hearing prevented him from conducting an independent investigation which, in turn, resulted in ineffective cross-examination of those witnesses.

As the district correctly points out, there is no authority for the proposition that a student has a right to confront witnesses in an expulsion hearing in the same sense as in a criminal trial. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996); *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985). Additionally, my predecessor has previously held that students do not have a right to confront witnesses in an expulsion hearing and school boards can rely on some hearsay evidence in such proceedings. See, e.g., *Linwood v. Board of Education*,

463 F.2d 763, 770 (7th Cir. 1972), citing federal law finding that due process in a student expulsion hearing need not take the form of a judicial or quasi-judicial trial and that the proceedings cannot be equated to a criminal trial or juvenile delinquency proceeding.

In the present case, I note that numerous student witnesses appeared and gave testimony at Nicholas' expulsion hearing. Nicholas argues that his rights were violated when he was unable to learn of the identify of the student witnesses prior to the hearing. The expulsion statute does not require this. I find no procedural error in the district refusing to disclose, prior to the hearing, the identify of students who are going to testify at the hearing.

Next, Nicholas challenges the credibility of the witnesses since one witness testified at the hearing that he was pressured by upper classmen to lie about seeing Nicholas with a gun at school. However, I note that several other students testified at the hearing that they saw Nicholas with a gun on school premises. In addition to the testimony of the student-witnesses, the prior written statement of each witness was entered into evidence during the hearing.

The credibility of witnesses is judged by the school board. It is within the province of the board to evaluate the evidence and determine whom they believe. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996), *Matthew C.M. v. Cedarburg School District Board of Education*, Decision and Order No. 274 (February 14, 1996), and *William S. v. Tri-County Area School District Board of Education*, Decision and Order No. 132 (June 21, 1985).

Next Nicholas challenges the sufficiency of the evidence arguing that no adult witnessed him with a gun, that he passed a polygraph which demonstrates he did not have a gun at school, and that no gun was ever found. It has been repeatedly held, however, that arguments concerning

the sufficiency of the evidence are generally beyond the scope of review. *Brent S. v. Mondovi School District Board of Education*, Decision and Order No. 290 (May 23, 1996), *Brad A. v. Boyceville Community School District Board of Education*, Decision and Order No. 233 (June 29, 1994), and *Taiwan O.W. v. Kenosha Unified School District Board of Education*, Decision and Order No. 186 (April 7, 1992). Thus, as the district correctly points out, a school board's findings will be upheld if any reasonable view of the evidence sustains them. *Courtney R. v. Germantown School District Board of Education*, Decision and Order No. 278 (March 21, 1996) and *Michael Ryan H. v. Clinton Community School District Board of Education*, Decision and Order No. 222 (March 10, 1994). I agree the board could reasonably have found what it did based on the evidence offered.

Finally, Nicholas appears to argue that the length of the expulsion is unfair. He also suggests that the school district had made up its mind about whether to expel him before the expulsion hearing based on a letter the superintendent sent him indicating if Nicholas ever attempted to re-enroll in the Hudson school district, he would recommend permanent expulsion.

I note that following Nicholas' September 13, 1994 conduct of bringing a gun to school the district sent him a notice scheduling an expulsion hearing for October 10, 1994. Prior to the expulsion hearing, Nicholas and the district came to an agreement whereby Nicholas would voluntarily withdraw from school and the expulsion hearing would be canceled. It is in this context that the superintendent sent a letter to Nicholas advising that should Nicholas ever attempt to re-enroll, the district would initiate expulsion proceedings and recommend his permanent expulsion. I find no error in the district's actions in this context.

With regard to the length of the expulsion, I have repeatedly held that the length of an expulsion is within the discretion of the board as long as all the procedural requirements of sec. 120.13(1)(c), Wis. Stats are complied with. *Nichole R. v. Granton Area School District Board of Education*, Decision and Order No. 301 (September 19, 1996), *Amanda L. v. Hartford Union High School District Board of Education*, Decision and Order No. 257 (August 3, 1995) and *Brandon H. v. DeSoto Area School District Board of Education*, Decision and Order No. 206 (May 3, 1993).

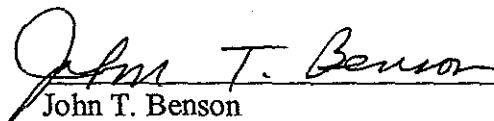
CONCLUSIONS OF LAW

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 [REDACTED] by the Hudson School District Board of Education is affirmed.

Dated this 5th day of December, 1996.



John T. Benson
State Superintendent of Public Instruction